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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 39

UNITED STATES OF AMERICA, PETITIONER

v.

PAUL E. PLESHA, JAMES E. MABBUTT AND MYRON L. KERN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court (R. 110–123) is reported at 123 F. Supp. 593. The opinion of the Court of Appeals (R. 325–331) is reported at 227 F. 2d 624. A supplemental *per curiam* opinion of the Court of Appeals (R. 332) is not officially reported.

JURISDICTION

The judgment of the Court of Appeals as to respondent Plesha was entered on November 30, 1955 (R. 331); its judgment as to respondents Mabbutt and Kern was entered on January 5, 1956 (R. 332). The petition for a writ of certiorari was filed on February 28, 1956, and was granted on April 9, 1956 (R. 333).

The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether, under the provisions of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, former servicemen are obligated personally to reimburse the United States for its payment of defaulted premiums on their commercial life insurance policies after they requested that, pursuant to the Act, their policies be protected against lapse during their time of military service and for a prescribed period thereafter.

STATUTES INVOLVED

The pertinent parts of the Soldiers' and Sailors' Civil Relief Act of 1940, 54 Stat. 1178, 50 U. S. C. App. (1940 ed.) 510 *et seq.*, and of its 1942 Amendment, 56 Stat. 769, 50 U. S. C. App. 541–548, are set forth in Appendices A and B, respectively, *infra*, pp. 77–83 and 84–88. 38 U. S. C. 454a is set forth in Appendix C, *infra*, pp. 89–90.

STATEMENT

Respondents brought this action against the United States to recover sums which it had withheld from a special dividend declared on their National Service Life Insurance policies (government insurance for servicemen). The United States had withheld these sums as a set-off to reimburse itself for payments it had made on respondents' behalf to protect their private life insurance policies (non-government insurance) against lapse for failure to pay premiums while they served in the armed forces and for a period

thereafter. Respondents had applied for this protection under the Soldiers' and Sailors' Civil Relief Act of 1940. At trial and in the court below, respondents' principal contention was that the Government's payment of their defaulted premiums constituted a gratuity and did not create a debt. The Government, on the other hand, contended that under the Act (and at the insureds' request) it had merely guaranteed the payment of premiums, and that, like any other guarantor, it is entitled to reimbursement from the debtor after it has paid his debt pursuant to the guaranty. The Court of Appeals decided in favor of the respondents.

A. THE FACTS

1. *Respondent Plesha.*—During the summer and fall of 1940, Plesha was a member of the National Guard. He expected his unit to be called into active service in the very near future (R. 181–182). In December of that year he obtained a $2,500 policy on his life from the California-Western States Life Insurance Company (R. 126). The annual premium on the policy was $57.63, payable $14.98 quarterly (R. 275, 295). Plesha paid only his first quarterly premium (R. 292–293, 295). He was inducted into active military service on March 3, 1941, three days before his next quarterly premium was due (*ibid.*; 126). He immediately filed applications with his insurance company and the Veterans' Administration to bring his private life insurance policy under the protection of the Soldiers' and Sailors' Civil Relief Act of 1940. The insurance company submitted appropriate forms.

which were approved by the Veterans' Administration, and the benefits and protection afforded by the Act were extended to his policy, effective March 6, 1941 (R. 126).

Thereafter, Plesha failed to pay premiums on this private life insurance policy (R. 127), but because he had brought the policy under the protection of the Act it did not lapse. § 405, *infra*, p. 80. Plesha was separated from the service on October 20, 1945 (R. 126). He did not notify the Veterans' Administration of his separation, but when that agency learned of it, in November 1946, it sent him VA Form letter FL 9-63 reminding him that defaulted premiums on his protected policy are charged as a loan against the policy and that the indebtedness carries interest at the policy loan rate. The letter advised him (a) that he could either withdraw his policy from the protection of the Soldiers' and Sailors' Civil Relief Act or continue such protection for a maximum period of two years from the date of his discharge,[1] (b) that any premiums accrued but not paid by him during the period of protection would, upon an accounting, be an indebtedness which he would owe the insurance company, subject to any credit allowed by

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[1] The Civil Relief Act of 1940 provided protection during the period of the insured's military service and for one year thereafter (§ 405, *infra*, p. 80). However, under the 1942 Amendment the period of protection was enlarged to two years following the insured's separation from service (§ 403, as amended, *infra*, p. 85). We are informed by the Veterans' Administration that insureds who had obtained protection under the original Act were notified and given the benefit of this extended protection unless they expressed a contrary desire. See R. 287-289.

the company for the then cash value of the policy, and (c) that the Government guaranteed the payment of this amount to the insurance company and that any amount not paid by him to the insurer would be paid by the United States "to whom you will then owe whatever payment the Government made on your account" (R. 126–127, 287–289). Hearing nothing from Plesha, the Veterans' Administration terminated the protection of his private policy on October 20, 1947, two years after his military service ended (R. 127).

Plesha's insurer, California-Western States Life Insurance Co., then reported to the Veterans' Administration that during the period that Plesha's policy had been protected against default his unpaid premiums plus interest at the policy loan rate (6% compounded annually) aggregated $343.93; and that after crediting the cash surrender value of $82.88 [2] there remained a balance of $261.05 subject to payment by Plesha or the Government. On January 2, 1948, the Government sent the insurer a check in that amount (R. 127).[3]

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[2] The cash surrender value of the policy was built up during the period of protection even though the insured defaulted in payment of his premiums. Plesha's total premium payment during the more than six years his policy was in force was $14.98, one fourth of an annual premium (*supra*, p. 3); he received credit for a cash surrender value of $82.88, more than five times the amount he had actually expended.

[3] Pursuant to the choice given by § 408 (2) of the 1942 Amendment of the Civil Relief Act (*infra*, pp. 87–88), Plesha's insurer had elected to settle its accounts with the Government under the simple method provided in the 1942 Amendment (R. 135).

During the following month, Plesha was informed of this payment to his insurer and was notified that this amount represented a debt due by him to the Government (R. 127). Acknowledging the indebtedness, Plesha wrote the Veterans' Administration that he was not then in a position to make payment in full, and, in reply, he was informed that he could discharge the obligation by paying small amounts each month. Thereafter, Plesha forwarded three checks totaling $40 which were credited to his account by the Veterans' Administration. There remained an unpaid balance of $221.05. (R. 127–128.)

Meanwhile, in May 1942 while he was in the service, Plesha was issued a government life insurance policy, under the National Service Life Insurance Act, in the amount of $10,000. He paid the premiums on this government policy and kept it in force until November 1945. (R. 3–4.) In 1950 the Veterans' Administration determined that his NSLI policy was entitled to participate in a special dividend to the extent of $233.75, but it set off the sum of $221.05 because of his indebtedness to the United States in that amount for the payment it had made to protect his private insurance policy under the Civil Relief Act (R. 128). It paid the $12.70 difference, informing him that his indebtedness was thereby liquidated (R. 129). Thereupon, Plesha instituted this suit for the amount withheld (R. 3).

2. *Respondents Mabbutt and Kern.*—Prior to their entry into the service, Mabbutt and Kern had also been issued policies by the California-Western States Life Insurance Company, Plesha's insurer. Like

Plesha, both brought their policies under the protection of the Civil Relief Act of 1940 and later defaulted in the premium payments. Pursuant to its guaranty, the United States subsequently paid the net amounts due on their accounts to their insurer, and then requested each insured to make reimbursement, which they failed to do. And like Plesha, both Mabbutt and Kern had been issued $10,000 National Service Life Insurance policies which, in 1950, were entitled to participate in a special dividend. The United States withheld $205.75 from Mabbutt's dividend, and $302.06 from Kern's dividend, as an off-set and in liquidation of the amounts (in excess of the respective cash surrender values of their commercial policies) owed by them to the United States for its payment on their behalf to protect such policies from lapse. (R. 129–135). Their complaints in intervention likewise seek the amounts thus withheld (R. 28, 31).

B. THE DECISIONS BELOW

Following a trial without a jury, the district judge made specific findings of fact (R. 125–138), as summarized above,[4] and filed an opinion sustaining the Government's right to reimbursement (R. 110–123;

[4] The trial court made a number of findings beyond the facts stated in the text. Thus, there were findings concerning the administration of the 1940 Act and statements about the Act made by VA officials (R. 136). The court also found that, when respondents' insurer elected to settle its accounts with the United States under the method provided in the 1942 Amendment, respondents were not consulted (R. 137). Additionally, the court found that respondents' private policies, as originally issued, contained provisions permitting the insureds to borrow from the

123 F. Supp. 593). He held that at the respondents' request the United States had guaranteed the payment of their defaulted premiums; that as a guarantor the United States would be entitled to reimbursement under common law principles; and that neither the provisions of the 1940 Act nor its legislative history are indicative of a Congressional purpose to abrogate this common law right of the United States to reimbursement (R. 116–117). He held further that 38 U. S. C. 454a (which prohibits the United States from off-setting debts against veterans' benefits except in cases of overpayment) was no barrier to the set-off here because the payment of premiums constituted an "overpayment" within the meaning of that section (R. 119–123).

The Court of Appeals for the Ninth Circuit reversed (R. 325–333; 227 F. 2d 624). Stating that statutes must be liberally construed in favor of veterans, the court pointed to the absence of any provision

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insurer on the sole security of their policies by applying for a policy loan; that, under these provisions, interest at 6% compounded annually would be added to the amount of the policy loan; that when the amount of the loan, thus increased, exceeded the policy loan values the policy would be cancelled, but the policies did not impose on the insureds a personal liability to repay such policy loans (R. 135–136). (Respondents, however, did not apply for a policy loan.) The court also found that a substantial number of other persons owning policies issued by the same insurer brought their policies under the protection of the 1940 Act. Of these, 8 were terminated by death while the policies were under protection, and 38 policy holders either paid the insurer in cash the amount of their unpaid premiums plus interest at the policy loan rate, or fully paid such premiums and interest by applying the cash value of their policies thereto (R. 137).

in the Act or regulations expressly spelling out a right of reimbursement, asserted that it would be difficult to determine the exact amount the United States might have expended on behalf of any particular policy if the insurer had settled with the Government under the procedures set up by the 1940 Act rather than under its 1942 Amendment, and suggested that if the United States recovered the premiums plus interest at the policy loan rate it might make a "profit" because of the difference between the interest rate it paid the insurer and the interest rate it was seeking to recover from the insured.

The court viewed the legislative history of the 1940 Act as inconclusive and construed the 1942 Amendment (which specifically states that amounts paid by the United States shall be a debt due to the United States by the insured) to be a modification, rather than a clarification, of that Act despite its being described as a "clarification" by the Congressional committees.[5] The court concluded that, "Congress may or may not have intended that the United States enjoy a common law recovery," but held that under the theory of *United States* v. *Gilman*, 347 U. S. 507,[6] it must "not find common law liability in favor of the Government where it is not provided for in the statute, where it is not an 'established type of liability', and where the legislative history is inconclusive as to whether Con-

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[5] See *infra*, pp. 64–68.

[6] In the *Gilman* case, this Court held that the United States, after having been held to be liable for damages in a Tort Claims Act suit, could not maintain a suit against its negligent employee to recover indemnity.

gress intended such a liability" (R. 331). The court recognized that its decision was in direct conflict with that of the Tenth Circuit, rendered four months earlier, in *United States* v. *Hendler*, 225 F. 2d 106.[7]

SUMMARY OF ARGUMENT

The court below held that respondents are under no obligation to reimburse the United States for its payment, on their behalf and at their request, of the premiums on their private life insurance policies. This holding construes the Soldiers' and Sailors' Civil Relief Act of 1940 as furnishing a particular group of servicemen with free commercial life insurance, at Government expense, during their period of military service and for some time afterward. It imputes to Congress an intention to have the United States gratuitously assume the indebtedness of servicemen on insurance contracts entered into before they joined the armed forces. This reading of the insurance Article of the 1940 Act is out of harmony with the general purpose of the statute; it is not necessary in order to effectuate the underlying policy; it is at variance with the Act's other provisions for civil relief; and it is inconsistent both with the scheme of the insurance Article and with its specific provisions. Moreover, it results in serious inequities.

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[7] Both courts below rejected a Government defense, based principally on 38 U. S. C. 11a–2, 445, and 817, that the district court has no jurisdiction over a suit seeking recovery of a National Service Life Insurance dividend. We have not raised that point in this Court.

I

A. The Act was aimed at protecting servicemen from prejudice and harassment in connection with their civilian affairs during their period in uniform. The entire thrust of the statute is to provide this protection through the device of a temporary deferment of previously incurred obligations, and not through a discharge or a gratuitous assumption by the United States of servicemen's debts. The Act itself, in its opening Article, states its purpose to be to provide for the "temporary suspension" of servicemen's obligations. The insurance provisions must be read in context with this stated purpose as well as with the Act's other provisions for civil relief all of which contemplate a deferment, not a discharge or wiping out, of the servicemen's debts.

B. The particular structure and terms of the Act's insurance provisions show that they do not confer a gratuity but that the United States may obtain reimbursement.

1. In the insurance Article Congress recognized that the primary debt was from the insured to his insurer for premiums accruing during the insured's military service and one year thereafter, and that the position of the United States was merely that of guarantor. The primary nature of the insured's obligation, woven into the entire Article, is aptly demonstrated by the provisions directing deduction of the unpaid premiums (with interest) from the proceeds of the policy on his death or from the cash surrender value if the policy does not mature by death, as well as by the re-

quirement that the ex-serviceman pay that amount to his insurer to keep the policy in force after the period of protection ends. Moreover, Congress was careful to require an application by the serviceman, concurred in by the insurance company.

2. Having requested and received insurance coverage from his insurer, the insured was obliged to pay the defaulted premiums. The United States, as a guarantor, paid the debt on his behalf and is entitled, under common law principles, to be reimbursed. The transaction was described repeatedly by the Congress, in debates and reports, as a guaranty. When Congress utilizes a legal transaction familiar to the law, it must be assumed to have meant to give that transaction the incidents and consequences which normally result from such a transaction; where the transaction is a guaranty, the guarantor is entitled to reimbursement even in the absence of an express agreement by the principal debtor.

3. The specific remedies given by the Act to the United States (lien, credit for cash surrender value, etc.) are summary in nature and manifestly were intended to safeguard and supplement, rather than to replace, the normal remedy of reimbursement. Nowhere does the Act indicate that they are to be the exclusive remedies and to hold them so would be unfair both to servicemen with protected policies and those who had none. Thus, some protected servicemen, who, like respondents, survive the war, obtain private insurance almost scot free, while other protected servicemen who die in service or whose policies have a cash surrender value sufficient to pay the defaulted

premiums cannot obtain this gratuity. Such a discrimination would not have a reasonable basis. It is highly unlikely, moreover, that Congress intended to provide free commercial insurance at high premium rates to some servicemen and at the same time to require the payment of premiums, as it did, on Government insurance (National Service Life Insurance).

4. It would be neither unjust nor impracticable to allow suit for reimbursement. Though the court below suggests that it would be impossible to determine the amount any particular insured owes the Government, the actual fact is that such a determination is perfectly feasible and is now being made. Nor is it at all certain that the Government will make a "profit"—because of a difference in interest rates—as the court also suggests; in any event, Congress may have deemed such a "profit" would be compensation for the costs and risks of undertaking this large-scale guaranty. In addition, the argument that it is impossible to determine the amount of the Government's claim is self-defeating, for, by the very same reasoning, it would be impossible to determine the amount which the statutory lien secures.

C. The *Gilman* decision, 347 U. S. 507, on which the court below relied heavily, is an exception to the historic rule that no specific statutory authority is needed for the United States to enforce established rights which others, similarly situated, would have. The unique considerations—revolving around the relationship of the Government and its employees—which led to the exception made in *Gilman* are not present here. In any event, Congress has indicated a policy

and a "position" requiring the insured to reimburse the United States—and against free insurance. It is, therefore, fully consonant with the policy of Congress to allow the Government's claim without express statutory authority.

II

A. That the 1940 Act creates a transaction of guaranty involving a primary indebtedness of the insured, with his consequent obligation to reimburse, is confirmed by the Act's legislative history. The 1940 Act was virtually a reenactment of the Civil Relief Act of 1918. The history of that earlier Act shows that the insurance provisions were written specifically to meet the objections of the insurance industry to a proposed bill which failed to provide for an enforcible obligation of the insured but which, instead, gave him an option to pay or not pay his premiums, as he chose (which is precisely the result of the decision below). As revised and passed, the bill provided for a consensual arrangement so as to create a primary indebtedness on the part of the insured and a guaranty of that indebtedness by the United States.

In construing the 1918 Act, the Veterans Bureau applied elementary principles of the law of guaranty, *viz.*, that the principal debtor (the insured serviceman) must reimburse the guarantor (the Government) for its payment of his debt (premiums) to the creditor (the insurance company). The Bureau sought and obtained reimbursement from servicemen who had applied for and received the protection of

the 1918 Act, and it advised Congress of this administrative construction.

B. In 1940, Congress reenacted the 1918 Act without material change and without any indication of disapproval of this construction—indeed, the only time the question of reimbursement arose while reenactment was being considered, the House was told that the law would require the insured to make repayment. Any ambiguous or mistaken informal representations later made by officials on this question cannot bind or estop the Government.

C. In 1942, Congress amended the 1940 Act by providing expressly that these payments by the United States "shall become a debt due to the United States" and shall be collectible from the insured. This amendment, which wrote into the statute the recognized common law principle applicable to all guaranties, did not change the 1940 Act but merely made explicit what theretofore had been implicit. The 1942 Amendment (which covered several subjects) was described, generally, in Congress as a clarification and liberalization of the 1940 Act, terms which would be inapposite if respondents' views were correct that what had been a gratuity would thereafter be a debt.

III

The United States has the same right of set-off which every creditor has. While 38 U. S. C. 454a exempts veterans' benefits from set-off, it does permit the set-off of "overpayments" made under veterans laws. Under the consistent administrative practice

and construction, a payment of a veteran's debt on his behalf, under a law relating to veterans, constitutes such an "overpayment." Accordingly, the United States had the right to set-off respondents' indebtedness against their National Service Life Insurance dividends.

ARGUMENT

I. THE PATTERN AND TERMS OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 SHOW THAT THE INSURED IS OBLIGATED TO REIMBURSE THE UNITED STATES FOR ITS PAYMENT OF DEFAULTED PREMIUMS ON HIS BEHALF

Under Article IV of the 1940 Act, the United States, at the insured's request, guaranteed the payment of his premiums on his commercial life insurance policy, so that his policy would not be forfeited if he failed to pay them during his period in service. The decision below holds that, because the Act has no express provision requiring the insured to reimburse the United States after it pays his premiums pursuant to the guaranty, the Government is precluded from asserting the normal common law remedy which every guarantor has. The result is that, although the insured has had private insurance coverage through the years, he does not have to pay for it unless he chooses to do so. This result, which is based upon implication rather than the statutory terms, is not in harmony with either the general purpose or the specific objectives of the Act. On the contrary, it is inconsistent with the Act's policy, purpose, and terms, all of which merely look toward a temporary postponement of the serviceman's obligations—a moratorium and not a discharge of his debts.

A. THE GENERAL PURPOSE OF THE ACT, AND ALL ITS OTHER PROVISIONS FOR CIVIL RELIEF, LOOK TOWARD A DEFERMENT AND NOT A DISCHARGE OF THE SERVICEMAN'S CIVIL LIABILITIES

In construing a statute, guidance should be sought not merely from a few of its words or sections, but from "the provisions of the whole law, and [from] its object and policy." *Mastro Plastics Corp.* v. *Labor Board*, 350 U. S. 270, 285; *United States* v. *Boisdore's Heirs*, 8 How. 113, 122; *United States* v. *Amer. Trucking Ass'ns*, 310 U. S. 534, 542–543. The opinion below pays little heed to the provisions of the Act as a whole and makes no mention whatever of the dominant purpose of the Act which is specifically set forth in its opening sentences (§ 100, *infra*, p. 77).[8] That purpose is stated to be to provide for "the *temporary suspension* of legal proceedings and transactions which may prejudice" the civil rights of persons in military service (emphasis added). As Judge Lemmon said of these words, in his opinion after trial (R. 110–111), "Coming as they do at the very threshold of the statute, these Congressional declarations tincture the entire enactment. Every article, every section, every paragraph, every sentence is tinged with this 'temporary suspension' hue—unless a contrary legislative intent is plainly shown. No such contrary intent has been even intimated in any of the sections pertinent to the present lawsuit."

As we point out elsewhere in detail (Appendices D and E, *infra*, pp. 91–108), the basic objective of the Act was to alleviate the hardship which servicemen

[8] We set forth in Appendix D, *infra*, pp. 91–98, a detailed analysis of the scheme of the insurance provisions of the 1940 Act and its 1942 Amendment.

might face in connection with their civilian affairs while they were in uniform away from home and business. In World War I, in similar circumstances, Congress had recognized that tens of thousands of men suddenly called into military service could be ruined "if creditors are allowed unrestrictedly to push claims" on obligations which were incurred before the men were called into the service, and that "freedom from harassing debts will make them better and more effective, more eager soldiers".[9] To accomplish this end, Congress was unwilling to impose an arbitrary and rigid prohibition of all actions against a soldier such as had been provided by the stay laws of the Civil War, for the lesson of those laws had shown that this would be "as much a mistaken kindness to the soldier as it is unnecessary. * * * There are many men now in the Army who can and should pay their obligations in full"; on the other hand, those who, because of their being in service, are unable to do so, "if given time and opportunity can, in most cases, meet their obligations dollar for dollar."[10]

In lieu of rigid prohibitions, the design of the legislation was to reflect a "policy of moderation and flexibility";[11] relief was to be afforded simply by deferring the enforcement of the serviceman's obligations. The Act was to establish uniform and effec-

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[9] H. Rept. No. 181, 65th Cong., 1st Sess., p. 3 (Oct. 2, 1917) (reporting on the bill which later became the Soldiers' and Sailors' Civil Relief Act of 1918 and which was substantially identical to the 1940 Act; see *Boone v. Lightner*, 319 U. S. 561, 565).

[10] H. Rept. No. 181, *supra*, at pp. 2–3.

[11] *Ibid.*, at p. 5.

tive machinery to that end. As Dean Wigmore, one of the draftsmen of the Civil Relief Act of 1918, said of the bill originally introduced in Congress, "We stopped at suspending the remedy. * * * The whole theory is simply to hold the [creditor's] hand. Throughout the bill, so far as I am able to see it, there is nothing more done than suspension of remedy." [12]

The introductory Article, as enacted, incorporates precisely that view. It specifies that "provision is hereby made to *suspend* enforcement of civil liabilities" and that "the following provisions are made for the *temporary suspension*" of the serviceman's civil obligations (§ 100, *infra*, p. 77; emphasis added). This purpose of providing a temporary suspension of the enforcement of obligations, which the court below completely ignored, is reflected in every subject covered by the Act.

For example, although the Act suspends the eviction of a serviceman's dependents from their dwelling (except upon leave of court), the Act does not relieve him from paying rent which accrues while the eviction is stayed (§ 300, 50 U. S. C. App. (1940 ed.) 530). Similarly, although the Act bars the termination of a serviceman's installment contract for nonpayment of an installment (again, except upon leave of court), it

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[12] *Hearings and Memoranda before the Subcommittee of the Committee on the Judiciary, U. S. Senate, 65th Cong., 1st and 2d sess., on S. 2859 and H. R. 6361*, p. 87. Although the insurance provisions of the original bill were later modified so as to incorporate a guaranty by the Government that the defaulted premiums would be paid, the theory underlying the Act and the purpose of the insurance provisions were not changed. See *infra*, pp. 99–108.

does not cancel the serviceman's indebtedness nor does it stop the accrual of further indebtedness through failure to pay installments becoming due during the period the remedies are suspended (§ 301; 50 U. S. C. App. (1940 ed.) 531). The same is true as to indebtedness accruing on mortgages, conditional sales contracts, taxes, etc. (§§ 302, 303, 500; 50 U. S. C. App. (1940 ed.) 532, 533, 560).

The insurance provisions must be read in this context. They follow the introductory Article and must, of course, take their meaning from it, for the opening words create the frame within which all of the Act's clauses must be viewed. The other specific statutory provisions, with their entire emphasis on suspension rather than cancellation, also have both an indirect and a direct bearing. Insofar as the insured is firmly obligated to pay premiums to his insurer after he requests the insurer to continue to give him coverage during his period in service (see *infra*, pp. 21–22), the recurring obligation to pay premiums is essentially the same as his recurring duty to make payments under leases, installment contracts, mortgages, and the tax laws. In the absence of express language in the Act's insurance provisions directing a different view—and the nature of insurance obligations furnishes no persuasive reason for differentiation—there is no justification for treating the serviceman's recurring premium obligation differently from his other recurring demands. To do so produces an unwarranted departure from the overall policy and the stated purpose of the Act. Cf. *Keifer and Keifer* v. *RFC*, 306 U. S. 381, 394.

B. THE BASIC STRUCTURE AND TERMS OF THE INSURANCE PROVISIONS SHOW THAT THEY DO NOT CONFER A GRATUITY BUT THAT THE UNITED STATES MAY OBTAIN REIMBURSEMENT

The provisions of Article IV and its legislative history (which we discuss separately below, p. 51 *et seq.*) demonstrate, *first,* that one purpose of the Article was to create a primary and legally enforcible debt due and owing by the insured to his insurer for premiums falling due during the period his policy was to be protected by the Act; *second,* that the transaction envisaged by the Article was one of guaranty, i. e. that the United States undertook to pay the insured's debt if he failed to do so within the period specified; and, *third,* that Congress did not intend to confer a gratuity upon the insured to the extent of any payments made by the United States pursuant to the guaranty, but on the contrary contemplated that the insured would reimburse the United States, and to that end even wrote into the Act security devices, beyond the normal common law remedies, such as the lien provision of § 408, to assist in obtaining prompt reimbursement. These summary remedies were not meant to replace, but to supplement, the common law remedies the availability of which need not be, and rarely is, explicitly spelled out in a statute.

1. *The insured is primarily indebted for the defaulted premiums.*—When an insured expressly requests an insurer to afford coverage during a specified period and the insurer gives that coverage, whether on the basis of the insured's personal credit or the added inducement of a guaranty by a third party, the insured is obligated to pay the insurer for the coverage so extended. The short of it is that he has

purchased insurance and he must pay for it. Cf. *Commercial Mutual Marine Ins. Co.* v. *Union Mutual Ins. Co.*, 19 How. 318, 323; *Tarleton* v. *DeVeuve*, 113 F. 2d 290, 295–296 (C. A. 9); certiorari denied, 312 U. S. 691. The insurance Article of the 1940 Act was specifically designed to reflect a transaction of that nature, one which would create a legally enforcible and primary obligation owing from the insured for premiums becoming due during his military service.[13] It was designed, moreover, to make the Government's role in the transaction to be that of a guarantor of the insured's obligation. See *infra*, p.

[13] As we show below in our discussion of the legislative history (pp. 99–108), it was the absence of such an enforcible obligation in the bill originally introduced in Congress during World War 1 which evoked the vigorous opposition of the insurance industry. Under the terms of the original bill, the insured made no request to his insurer to continue to give him coverage even if he did not pay the premiums on time, and without such a request there was no basis for any contractual obligation or personal liability for the premiums. That bill required the insurer to extend coverage but in effect gave the insured an option to pay or not to pay his premiums, as he saw fit, after his separation from the service (which, incidentally, is exactly the result of the decision below). See *Hearings and Memoranda on S. 2859 and H. R. 6361*, 65th Cong., 1st and 2d Sess., pp. 102 *et seq.*; see also *United States* v. *Hendler*, 225 F. 2d 106, 110 (C. A. 10). To avoid this result the bill was revised and the optional nature of the obligation was removed. As passed in 1918 and reenacted in 1940, the Act contemplated—indeed, provided for—a binding primary obligation on the part of the insured to pay the premiums to the insurer, for it extended protection only when the insured expressly requested his insurer (through an application submitted *to the insurer*) to continue insurance coverage despite current default of premiums (the ultimate payment of which the Government guaranteed), and the insurer (by forwarding the application to the Government) agreed to do so. § 401 (1), *infra*, p. 78.

25 *et seq.;* p. 102 *et seq.* It is important to bear in mind at this stage of the argument that the concept of guaranty implies the existence of a primary obligation, for, by definition, a guaranty is a promise by one party to pay the debt of another if the other fails to pay (see fn. 14, *infra,* p. 26).

Sections 408 through 411 (*infra,* pp. 81–82) clearly indicate that it is the insured who is primarily liable for the debt created by the unpaid premiums, and each of these sections is flatly irreconcilable with the view that Congress intended to give servicemen "a free ride in their private insurance" (R. 110). Thus, § 410 envisages payment by the insured to the insurer: "If the insured does not within one year after the termination of his period of military service pay to the insurer all past due premiums with interest thereon * * * the policy shall * * * lapse." The primary nature of the insured's obligation is also recognized in § 409 which provides that, in the event of the death of the insured while the protected policy is in force, "the amount of any unpaid premiums, with interest at the rate provided for in the policy for policy loans, shall be deducted from the proceeds of the policy" in payment to the insurer for such unpaid premiums. Unquestionably, this provision directing self-payment by the insurer, at maturity, implies an underlying debt of the insured. It should be noted that the same section directs that this deduction of the insured's indebtedness shall be credited to the United States in the insurer's next monthly report, thus removing this amount from any payment due from the United States. This, too, is wholly incon-

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sistent with the view that the Insurance Article contemplates no liability by the insured and a gratuity by the United States. Since the United States would normally have issued certificates to the insurer for the defaulted premiums at the time of their default (§ 407; see ~~*supra*~~ infra, p. 81), this provision means that the insured, not the United States, pays, out of the proceeds of the policy, for the defaulted premiums.

The provisions relating to the disposition of the cash surrender value and to the Government's lien also militate against the view that the insurance protection was to be provided without obligation by the insured for the premiums. § 411 provides that if the insured fails to pay the defaulted premiums to his insurer, the cash surrender value (to the extent of the unpaid premiums with interest at the policy loan rate) shall be credited to the United States upon final accounting. This provision, depriving the insured of the cash surrender value of his policy, is consistent only with the objective of liquidating an indebtedness owed by him for the unpaid premiums, and obviously not with a purpose of providing free insurance.

Section 408, on the other hand, provides that to indemnify it against loss the United States shall have a lien on the policy. This clause also necessarily implies a debt of the insured which has existence independent of the lien, for a lien is simply a security device; title to the property which is subject to the lien is not thereby vested in the lienor; a lien is only an encumbrance or a charge upon property for the payment of a debt. *Tobin* v. *Insurance Agency Co.,*

80 F. 2d 241, 243 (C. A. 8); *United States* v. *1364.76875 Wine Gallons,* 60 F. Supp. 389, 392 (E. D. Mo.); 33 Am. Jur. 419. If a gratuity were intended and there were no obligation on the insured, there would be no occasion for a lien or for any provision to secure the United States *"against loss"*. Indeed, the very fact that the section specifies that the United States is to be safeguarded "against loss" contradicts the view that the United States is to pay the insured's defaulted premiums without recourse against him.

Moreover, such phrases as *"defaulted* premiums" (§ 408), *"unpaid* premiums" (§ 409), *"past due* premiums" (§ 410) all indicate an obligation to pay. This is underscored by the requirement that the premiums must be paid *with interest,* for the word "interest" imports an amount which one has *contracted* to pay for the use, directly or indirectly, of money; it normally does not apply to moneys which are payable or not wholly at one's will and without legal obligation (*Equitable Society* v. *Commissioner,* 321 U. S. 560, 564; *Deputy* v. *DuPont,* 308 U. S. 488, 498).

It is to be noted, finally, that nowhere in the Act is there any suggestion that this primary obligation of the insured is for anything less than the entire amount of the defaulted premiums plus interest at the policy loan rate. §§ 409, 410, and 411 refer specifically to the unpaid premiums "with interest at the rate provided for in the policy for policy loans".

2. *Having paid the defaulted premiums as a guarantor, the United States is entitled under the rules*

applicable to guaranty to reimbursement from the principal debtor.—As we have just pointed out, under Article IV of the Act the United States undertook to pay the insured's defaulted premiums only if he did not; the insured was primarily indebted; the Government's liability was a conditional or secondary one. In short, the statute created, and was intended to create, a transaction of guaranty.[14] *United States* v. *Hendler,* 225 F. 2d 106 (C. A. 10); *United States* v. *Nichols,* 105 F. Supp. 543 (N. D. Ia.); appeal dismissed, 202 F. 2d 958 (C. A. 8); *Morton* v. *United States,* 113 F. Supp. 496 (E. D. N. Y.): *Decisions of the Administrator of Veterans Affairs, No. 742,* Vol I, Supp. p. 93 (set out at R. 62–94). That was the substance of the relationship Congress established in

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[14] A guaranty is a promise to pay if the one primarily liable for the debt does not. 24 Am. Jur. 873–874; 4 Williston on *Contracts* (Rev. Ed.), p. 3484. Being a collateral undertaking of another person, a guaranty imports the existence of two independent obligations: that of the principal debtor and that of the guarantor. 24 Am. Jur. 875–876. It differs from suretyship in that the surety is party to the original obligation, may be sued as a primary obligor jointly with the principal, and is unconditionally bound; in guaranty, the guarantor's liability is secondary and is conditioned upon default of the principal debtor and notice of such default. 24 Am. Jur. 879. Guaranty differs from indemnity in that the indemnitor's liability is primary and, in the normal situation, there is no privity or obligation between the parties to the indemnity contract and the third person (principal debtor) who causes the loss; in guaranty, there must be an obligation or privity between the creditor and the principal debtor: See *Howell* v. *Commissioner*, 69 F. 2d 447, 448 (C. A. 8); *United States* v. *Nichols*, 105 F. Supp. 543, 556 (N. D. Ia.), appeal dismissed, 202 F. 2d 958 (C. A. 8); 24 Am. Jur. 882–883.

Article IV,[15] and although the word "guaranty" is not used in the Article,[16] we will see later (*infra*, p. 53 *et seq.*, p. 102 *et seq.*) that that was the term which was used repeatedly to describe and explain the transaction in the committee reports, in the legislative hearings, in the debates on the floor of the House and Senate, in the Regulations implementing the Act, in its administrative construction, and even in the title given to Article IV when it was first proposed as a separate bill.

The concept of "guaranty" has a definite and well known legal significance in our law. Congress is presumed to use established legal terms with their recognized meaning. *Case* v. *Los Angeles Lumber Co.*, 308 U. S. 106, 115; *McNally* v. *Hill*, 293 U. S. 131, 136. Similarly, when Congress utilizes a transaction familiar to the law, Congress normally means to ascribe to that transaction the same legal characteristics and the same consequences as normally flow from it. See,

[15] There can be no doubt that under the Civil Relief Act the basic requisites of the formation of a contract of guaranty were present. There was offer and acceptance (submission of applications to the VA and latter's approval); consideration (extension of insurance and deferment of lapsing the policy for failure to pay premiums currently); an independent promise of guaranty (the United States undertook to pay premiums if the insured did not); there was provision for the creditor-insurer to give notice of default by the principal debtor-insured (through the monthly reports and final accounting), etc.

[16] Just as the word "contract" is not needed to constitute a contract, it is well settled that the presence or absence of the label "guaranty" is not decisive in determining whether a particular transaction is one of guaranty; instead, the transaction must be viewed in the light of its incidents, the attendant circumstances, and the intentions of the parties. 24 Am. Jur. 876–877.

e. g., guaranty—38 Ops. Atty. Gen. 75; 38 *id.* 319; insurance contract—*Ferguson* v. *Union National Bank*, 126 F. 2d 753, 759 (C. A. 4); *Fleetwood Acres* v. *FHA*, 171 F. 2d 440, 442 (C. A. 2); note—*United States* v. *Hansett*, 120 F. 2d 121, 122 (C. A. 2); mortgage—*HOLC* v. *Wilkes*, 130 Fla. 492, 178 So. 161.

It is, of course, an elementary rule of guaranty that where the guarantor, pursuant to his undertaking, has paid the indebtedness, the principal debtor is obligated to indemnify and reimburse the guarantor. The debtor's obligation to pay the debt is not extinguished by the guarantor's payment. Even in the absence of any express contract, he is impliedly bound to reimburse his guarantor. *Fidelity & Deposit Co.* v. *Hobbs*, 144 F. 2d 5, 8 (C. A. 10); *Joe Balestrieri & Co.* v. *Commissioner*, 177 F. 2d 867, 872 (C. A. 9); *Scott* v. *Norton Hardware Co.*, 54 F. 2d 1047, 1050 (C. A. 4); and see, *Howell* v. *Commissioner*, 69 F. 2d 447, 450 (C. A. 8), certiorari denied, 292 U. S. 654; 4 Williston on *Contracts* (Rev. Ed.), p. 3635; 24 Am. Jur. 956.

Not only may the claim of the guarantor be based upon this implied contract with the principal debtor (the insured) for reimbursement, but it may also rest upon subrogation to the creditor's (the insurance company's) rights against the insured (the principal debtor). *Alexander* v. *Young*, 65 F. 2d 752, 756–757 (C. A. 10); *Scott* v. *Norton Hardware Co.*, *supra*, 54 F. 2d at 1051; *Howell* v. *Commissioner*, *supra*, 69 F. 2d at 451; 24 Am. Jur. 955–956.[17] As

[17] Additionally, since the insured (through his application) specifically requested the United States to pay his premiums, recovery may be grounded on an implied agreement to repay the

stated by the Tenth Circuit in *United States* v. *Hendler, supra,* 225 F. 2d at 108,

> We think it is clear that the Government does not become primarily liable for the payment of premiums on insurance policies of servicemen who took advantage of the benefits of the Act. It is only a guarantor, guaranteeing payment thereof. It merely guarantees payment of such premiums as are not paid by policyholders who have come under the Act. It is well settled in the law that one who guarantees a debt of another and is required to pay the same is entitled to reimbursement from the principal debtor. This principle is so well settled that no citation of authority is necessary. Since the contract between the Government and the serviceman arising from the Act is one of guaranty, it must follow that the Government is entitled to reimbursement unless the Act itself compels a contrary conclusion.

The only terms of the Act which have been alluded to as suggesting a contrary conclusion are those which provide remedies to the United States of a type not normally available to a guarantor at common law. But these remedies were not meant to be exclusive of all others.

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premiums paid in his behalf. *Metropolitan R'd* v. *Dist. of Columbia*, 132 U. S. 1, 12–13; 4 Am. Jur. 507.

It is also pertinent to note that, in the absence of an agreement to the contrary, the duty to pay the premiums on a life insurance policy which has been assigned as collateral rests upon the insured rather than the assignee, and if the assignee pays them, he is entitled to be reimbursed for the amount paid. 29 Am. Jur. 357.

3. *The remedies given by the Act to the United States supplement, rather than replace, the ordinary remedy of reimbursement.*—Respondents argued below, and the court below appears to have agreed, that, assuming that a transaction of guaranty was intended, the Act confers its own remedies upon the United States which replace the established remedy of reimbursement. In that connection, they referred to §408 (*infra*, p. 81) which provides that, "To indemnify it against loss the United States shall have a first lien upon any policy receiving the benefits of this article"; to § 409 (*infra*, p. 82) which declares that, in the event of the insured's death, the defaulted premiums with interest at the policy loan rate shall be deducted from the proceeds of the policy and credited to the United States in the monthly report; and to § 411 (*infra*, p. 82) which requires that, upon the final settlement between the insurer and the United States, the United States shall be given credit for the cash surrender value of the lapsed policy (to the extent of the unpaid premiums with interest at the policy loan rate).

This argument has been comprehensively examined and squarely rejected by the agency charged with the administration of the Act (*Decisions of the Administrator of Veterans' Affairs, No. 742,* Vol. I, Supp. p. 93 (set out at R. 62–94); *ibid.*, No. 513, Vol. I, p. 781 (set out at R. 56–62)) and by several of the lower courts as well (*United States* v. *Nichols*, 105 F. Supp. 543 (N. D. Ia.) appeal dismissed, 202 F. 2d 958 (C. A. 8); *United States* v. *Hendler,* 225 F. 2d 106 (C. A. 10); *Morton* v. *United States,* 113 F. Supp. 496

(E. D. N. Y.)). It should likewise be rejected here.

In the *first* place, as we have already pointed out (*supra*, pp. 23–25), each of these provisions is consistent only with a Congressional policy that the burden of the premiums should fall where in equity and good conscience, and under traditional legal principles, it belongs—upon the insured. These remedies, in themselves, "tend to indicate that there was no intent on the part of Congress to provide gratuitous insurance." *Nichols, supra,* 105 F. Supp. at 557. They are provisional or summary remedies designed to safeguard the reimbursement right of the United States. Their function is to assure the United States that funds owed by the insurer to the insured will not be paid or dissipated unless the claims of the United States against the insured are first satisfied. They provide "a remedy about which there might otherwise be some difficulty with respect to procedure or with respect to exemption statutes" (*ibid.*).[18]

Second, as we have also noted, the lien provision necessarily implies an indebtedness to the United States which exists independently of the lien, for a lien is only a security device—it is a charge upon property to secure payment of a debt. And the underlying debt which the lien secures must be for the entire amount of the insured's obligation to his insurance company, which the United States undertook to pay if the insured did not. The section (§ 408, *infra,*

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[18] Submission of the application for protection by the insured and the insurer constituted their "consent to such modification of the terms of the original contract of insurance as are made necessary by the provisions of this article" (§ 401, *infra*, p. 78).

p. 81) speaks of indemnifying the United States "against loss," *without qualification.* There is nothing to suggest that the Government was to be indemnified merely *pro tanto* or only up to the extent of the cash surrender value. Rather, the governmental "loss" against which the lien is security must relate to the subject matter of the sentence which immediately precedes the lien provision in § 408, *viz.*, the certificates delivered by the United States to the insurer as security "for the payment of the defaulted premiums with interest." This phrase, "the defaulted premiums with interest," represents the entire amount the United States has under risk of loss. These two sentences of § 408—relating to certificates and lien—indicate that both the insurer and the United States are to be secured against loss, the insurer by certificates, the Government by a lien, but both for the *same* indebtedness, namely, the insured's unpaid-premiums-with-interest.

Third, to limit the reimbursement right of the United States solely to the statute's provisional remedies—lien on the proceeds of the policy, or credit for the cash surrender value, or credit for premiums and interest on death—would be inequitable from the viewpoint of both the United States and the servicemen. Instead of being uniform as to all servicemen and veterans, the reach of the remedy and of the insured's liability would vary from policy to policy. The widow, beneficiary, or estate of the serviceman who makes the ultimate sacrifice in line of duty would be liable—through the Government's lien on the proceeds of the policy—for full payment of all unpaid premiums. On

the other hand, those servicemen who survive, like respondents, would be liable only to the extent of the available cash surrender value on their policy, and of course that amount might be different in each case, some policies with perhaps no cash surrender value at all (*supra*, fn. 2, p. 5; *infra*, pp. 41–42). And whenever the cash surrender value would not be sufficient to meet the premium obligation, the United States would have no recourse for the deficiency. The point is forcefully stated by the Administrator of Veterans' Affairs (*Decision No. 742, supra*, at pp. 104–105; R. 86–87):

> To hold that the insured is not indebted to the Government in such circumstances would produce results so inequitable and falling so unevenly upon those protected under the 1940 Act that the intelligence and sense of fairness of Congress should not be impugned by ascribing to it such an intent unless no other conclusion can be drawn from the language of the Act itself. For example, it would be possible, in that event, for an insured, whose policy had no cash surrender value or only such as accrued at no cost to him, to allow his insurance to lapse upon termination of the Act's protection, thereupon pay nothing at all, and yet be free of all obligations. On the other hand, the Act specifically requires another, who loses his life in service, to pay the premiums by having them deducted from the proceeds of the insurance. Still another who at the time of seeking the Act's protection was insured under a policy possessing a cash surrender value—substantial in amount but not exceed-

ing the unpaid premium—, must lose even that which he had before entering service unless he pay the premiums. He cannot avoid such loss by having the Government step in and pay the insurer, and hence he cannot even delay the payment beyond the time provided. Finally, one who desires to continue the insurance in force after the Act's protection ceases must pay the back premiums according to the terms of his policy, and this is so no matter what the cash surrender value may be.

Thus the sum of the decision below is that the only insureds who do not have to pay the defaulted premiums (with interest) are those, like respondents, who enjoy the protection of the insurance during their period of service and for some time thereafter, but who do not desire to continue the insurance after they have been settled again in civilian life, and whose cash surrender values are insufficient to make up the amount of the default.[19]

From the Government's point of view, there are also inequities. The purpose of the statutory remedies was to provide security, to the extent available, against *any loss* by the Government. To confine the Government's rights to these summary remedies would subvert that purpose, and in many cases would assure some loss because it would deprive the United States of the right to seek the deficiency. The admonition of

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[19] Another inequality is that between respondents, covered by the 1940 Act, who entered service before the country was at war, and the servicemen joining the armed forces after war was declared who were covered by the 1942 Amendment which explicitly requires reimbursement. *Infra*, pp. 64–65.

this Court in *Shriver* v. *Woodbine Bank*, 285 U. S. 467, 478–479, is pertinent:

> Here, the remedy provided [by the statute] is a summary and only partially effective supplement or alternative to that which the common law affords for enforcing the obligation to pay a sum certain * * *. The very fact that the remedy is on its face inadequate to compel full performance of the obligation declared, is persuasive that it was not intended to be exclusive of applicable common law remedies, by which complete performance might be secured.

With respect to equality between servicemen, there is an additional factor—stressed in the *Nichols* case, 105 F. Supp. at 558—indicating that Congress intended the United States to be reimbursed in full under the 1940 Act, and that the statutory remedies should not be exclusive. The *Nichols* court noted that, if those in the position of the present respondents were to escape reimbursement, the result would be that a particular group of servicemen would have been furnished with free insurance protection by the United States with commercial insurance companies. Yet, just nine days before passage of the Civil Relief Act of 1940, Congress had passed the National Service Life Insurance Act. Under that Act, servicemen had to pay for their insurance protection. It is hardly credible that Congress, after passing an act requiring servicemen to pay for Government insurance, "would nine days later turn around and provide a certain group of servicemen with what in substance would be free insurance

protection with commercial insurance companies, with higher premium rates." [30]

Finally, it is significant that Congress was aware that the 1918 Act had been construed administratively as a guaranty and as requiring the insured to make full reimbursement, and that the statutory remedies had been administratively held not to be exclusive. In its final report to Congress relating to the 1918 Act, the Veterans' Bureau had advised that some collections had been recovered as a reimbursement for payments made by the United States under the guaranty (*infra,* pp. 56–57). When Congress is aware of the manner in which a statute has been construed by the agency or officials charged with the duty of carrying its provisions into effect, and then reenacts the legislation without evidencing any disapproval of the administrative construction, it is ordinarily presumed that the construction met with the approval of a Congress which did not change the statute. *United States* v. *G. Falk & Brother,* 204 U. S. 143, 150–152; *United States* v. *Philbrick,* 120 U. S. 52, 58–59; *National Lead Co.* v. *United States,* 252 U. S. 140, 145–146; *United States* v. *Bailey,* 9 Pet. 238, 255–256; cf. *United States* v. *Cerecedo Hermanos y Compañia,* 209 U. S. 337, 339; *United States* v. *Dakota-Montana Oil Co.,* 288 U. S. 459, 466; *Missouri* v. *Ross,* 299 U. S. 72, 75; *Commissioner* v. *Flowers,* 326 U. S. 465, 469.

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[30] Premiums were also required to be paid on insurance issued by the Government under the War Risk Insurance Act during the first World War. See *infra,* pp. 106–107. See also *Decisions of the Administrator of Veterans' Affairs, No. 742,* Vol. 1, Supp. 93, 105–106 (R. 88–89).

A corollary rule of like import leads to the same conclusion. It is settled that an established common law remedy is not taken away by a statute except by express enactment or necessary implication, *Shriver* v. *Woodbine Bank*, 285 U. S. 467, 478–9; *United States* v. *Chamberlin*, 219 U. S. 250; *United States* v. *Stevenson*, 215 U. S. 190, 197–199; *King* v. *Pomeroy*, 121 Fed. 287, 290–293 (C. A. 8); and see *Perego* v. *Dodge*, 163 U. S. 160, 167–168. Certainly, there is no express waiver of the common law remedy in the 1940 Act; nor must such a waiver be implied from the Act's summary remedies. Those sanctions are, as we have noted (*supra*, pp. 30–35), cumulative, not exclusive, and they are in no way inconsistent with the normal remedy of reimbursement.

4. *It would not be unjust or impracticable to require the insured to make reimbursement.*—The court below thought (R. 328–329) that all the considerations we have discussed were outweighed by the probabilities that (a) if the United States were allowed to recover from insureds in respondents' position it would make an unjust "profit," and (b) the Government could not accurately tell how much it was entitled to recover from any particular insured. In this argument, the court followed the opinion in *Hormel* v. *United States*, 123 F. Supp. 806 (S. D. N. Y.) (pending on appeal).[21]

[21] Since the issues in *Hormel* are identical with those raised in the instant case, further prosecution of the appeal in *Hormel* is being suspended pending this Court's disposition of the present case.

In *Hormel*, the judge, asserting that the guarantor may be reimbursed only in the amount which he is required to pay on his guaranty, held that under the 1940 Act there is no way of determining how much of the total paid by the Government to each insurer is attributable to a particular insured (*ibid.* at 812). He noted that there could be a "disparity" between the amounts paid by the Government to the insurers and the amounts which the Government was seeking to collect from the insureds through reimbursement (*id.* at 814), with a resultant "profit" to the Government (R. 328). Through a series of hypotheticals the district judge suggested that the "disparity" resulted from the fact that (a) the insured was liable to the insurer for the defaulted premiums plus interest at the policy loan rate, usually 5% or 6%, but the Government was liable to the insurer for the premiums plus interest fixed by the Secretary of the Treasury at only 3%,[22] and (b) the accounts between the various insurers and the United States were to be settled on a lump-sum-basis rather than on a per-policy-basis, making it difficult to trace the exact share attributable to a particular policy. The judge concluded that the failure of Congress to set out in the Act a specific plan for computing the amount owed by a particular insured "demonstrates

[22] The certificates delivered by the Government to the insurer on the basis of the "monthly differences", as security for the defaulted premiums, were to bear interest at a rate to be prescribed by the Secretary of the Treasury (see *infra*, p. 94). It so happened that the rate was fixed at 3 percent, 38 C. F. R. (1941 Supp.) 10.3312, but Congress could not have known at the time of passage of the Act the rate which the Secretary would fix and thus could not anticipate any "disparity."

that Congress did not intend that there should be any recovery from the insured" (123 F. Supp. at 812).

There are several reasons why this position is wrong. *First,* the Act *does* indicate the amount for which the insured is liable; it contemplates that the insured is to pay the defaulted premiums plus interest at the policy loan rate. The amount specified for deduction from benefits payable in the event of the insured's death while the policy was protected (which amount was to be credited to the United States) is "any unpaid premiums, with interest at the rate provided for in the policy for policy loans" (§ 409); and, on settlement, the cash surrender value—not to exceed unpaid premiums with interest at the policy loan rate—was to be credited to the United States (§ 411). This is the same amount which had to be paid to the insurer if the insured desired to keep the policy in force following the period of protection (§ 410).

This amount would not be difficult to ascertain in any individual case. The plan provided by the Act (§ 406) (see *infra,* pp. 93–95) in the form of monthly difference reports—on which were recorded the name of each protected policyholder, the amount of any premiums not paid by him when due, and the amount of any defaulted premiums subsequently paid on his behalf (even those deducted from the proceeds on maturity, as provided in § 410)—would certainly enable any layman to determine the amount chargeable to the Government's guaranty in each particular instance. This is emphasized by the terms of § 411 which require that in arriving at the balance due by

the Government on final settlement the records of each "case" be examined so that no policyholder would be charged "a greater amount * * * than the total of the unpaid premiums with interest" against the cash surrender value of *his* policy. Thus, so far as an individual policyholder is concerned, the fact that a portion of his unpaid premiums might be secured and represented by outstanding certificates issued on the basis of monthly difference reports which also included the unpaid premiums of others would not preclude a determination of the particular amount chargeable to his default. And, as to policies which matured by reason of the death of the insured, the effect of immediate payment of the defaulted premiums and interest from the policy proceeds, pursuant to § 410, eliminated that policy from the ultimate settlement procedure of § 411 and therefore could not significantly affect the amount required to be disbursed on account of any other policyholder.

Second, it is by no means certain that any disparity adversely affecting an insured would result from the payment by the Government of 3% interest on certificates. The Government had to pay this interest from the date of issuance of the certificates until one year after the Act ceased to be in effect, *i. e.,* 18 months after the war ended (§§ 407, 411, 604); the insured, on the other hand, was charged with interest at the policy loan rate on defaulted premiums, 6%, but *for the shorter period* ending not later than one year after separation from service (or two years afterward, under the 1942 Amendment). Thus, the aggegate interest paid by the Government over the *longer* period of time would

probably have exceeded the amount it could collect from the insured.[23]

In any event, the insured's legal obligation to the insurer was for the full amount of unpaid premiums and interest at the policy loan rate, as already pointed out, but where the Government fully discharged that obligation the insured would actually be called upon to pay no more than such indebtedness *less the cash surrender value of his policy.*[24] It is significant that an insured who did not pay premiums during his period of service (and two years thereafter) would not contribute to the cash surrender value *which nevertheless accumulated during that period* (the Government received credit for the enhanced amount at settlement). To the extent the cash surrender value was created or enlarged during that period, the insured lost none of his own money by application of that cash surrender value to reduce the amount payable to the insurer on final settlement. On the contrary, he gained thereby, for the insured is never charged, on final settlement, the full amount of the defaulted premiums with interest at the policy loan rate, but only the difference between such sum and the

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[23] It should be observed, moreover, that respondents' insurer had elected to settle under the procedures established by the 1942 Amendment (R. 135) and pursuant to those procedures the United States actually paid the insurer the amount of the unpaid premiums plus interest at the policy loan rate for the period the policies were under protection. Under the facts of this case, therefore, no "profit" could accrue.

[24] Section 411 (*infra*, p. 82) provides that the cash surrender value of *each policy*, not to exceed defaulted premiums plus interest *on such policy*, was to be credited against the Government's liability on the guaranty.

cash surrender value—to the latter of which, in most instances, he made little or no contribution whatever.

Clearly illustrating this point is the record relating to respondent Plesha's protected policy:—Plesha's total premium payment during the more than six years his policy was in force was $14.98, one fourth of one annual premium, which he paid shortly before he entered the service (R. 295, 275). When his policy was brought under the protection of the Act, it had no cash surrender value at all (R. 295). By the time the protection ended, however, the cash surrender value (enhanced by virtue of the Government's guaranty) had increased to $82.88. That value, which was more than five times his initial and only payment to the insurer, was credited toward his debt to the insurer on final settlement (R. 127).[25]

Third, while it is true that a guarantor's right of reimbursement is normally limited to his net outlay, there is no reason why, in the absence of any overreaching, the guaranty arrangements between the parties cannot provide otherwise. As for the servicemen insureds, the situation is no different from the usual surety situation where the surety company charges a fee for its undertaking; the Government frequently charges a fee for its guaranty, perhaps the

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[25] Veterans' Administration records relating to the protected policy involved in *United States* v. *Hendler*, 225 F. 2d 106 (C. A. 10), show that Hendler paid his insurer only one-fourth of his first $213.25 annual premium, amounting to about $53, before his policy was brought under the protection of the Act. When the protection ended, the cash surrender value on his policy had increased to $805, more than fifteen times Hendler's single payment to his insurer.

most common situation being the ½% charge in connection with private home mortgages guaranteed by the Federal Housing Administration. Congress may have contemplated that any difference in interest rates between that paid to the insurer on certificates and that provided for policy loans should be retained by the Government against its contingent liabilities under the Act.

It is the normal rule that the guarantor is entitled to be reimbursed for all expenses reasonably incurred by him in connection with his undertaking. *Restatement of Restitution,* Sec. 80, *Com. b*; 4 Williston on *Contracts* (Rev. Ed.), p. 3666. The possible disparity referred to in *Hormel* may be said to reflect and to offset, at least in part, the Government's expenses in connection with the entire undertaking under Article IV of the Act. The experience under the 1918 Act where a deficiency appropriation was necessary (*infra,* fn. 38, p. 55), the anticipation that reimbursement collections would not be possible in all cases, the administrative expenses involved, all suggest that Congress may have intended to spread the burden of costs through the system it adopted.

Fourth, it should be noted that under the theory of the decision below, and under the *Hormel* ruling, the only remedy available to the Government in the circumstances of this case is the lien on the policy under § 408 (*infra,* p. 81). But it seems plain that, if the courts' reasoning is correct, that remedy, too, would have to be a nullity. If the United States is limited in reimbursement to the precise amount it pays to the insurer on behalf of the insured, and if that amount

is not ascertainable, by parity of reasoning the Government would similarly be precluded from exercising the remedy of a lien. Under the courts' theory, there would be no way of determining the amount due to the United States in enforcing the lien. Every argument the *Hormel* opinion makes to show the impossibility of ascertaining the amount of the Government's claim would also apply in ascertaining the amount which the lien secures. The lien is a charge on the policy to the extent of that claim, and if the extent of the claim cannot be ascertained, neither can the extent of the lien. Thus, to adopt the *Hormel* reasoning would nullify the statute's remedy of a lien, and would leave the Government with no remedy at all, a manifest distortion of the congressional purpose.

Finally, even if we accept the premise of the *Hormel* opinion that any recovery by the United States would have to be measured by the exact amount it paid to the insurer on behalf of a particular insured, it does not follow that, because it is difficult to determine that amount under the lump-sum settlement method of the 1940 ~~Act~~, the United States should have no recovery at all. If, as we have shown, the purpose and terms of the legislation are inconsistent with a Congressional intention to provide free commercial life insurance for a particular group of servicemen, but instead reflect a general policy that servicemen's debts are only to be temporarily deferred (§ 100) and particularly that the United States shall be safeguarded against "loss" in the insurance transaction (§ 408), then reference to difficulties in admin-

istration provides no sufficient justification for departing from or countermanding that policy. Cf. *Addison* v. *Holly Hill Co.*, 322 U. S. 607, 617–618. If the Government is to be limited to its net outlay, the case should be remanded to the trial court for appropriate computations to establish the precise amount it has disbursed on behalf of a particular insured.[26]

C. NO EXPRESS STATUTORY AUTHORITY IS NECESSARY FOR THE UNITED STATES TO OBTAIN REIMBURSEMENT FROM THE INSURED

Another foundation of the ruling below is the assertion that under the theory of the *United States* v. *Gilman*, 347 U. S. 507, there can be no "common law liability in favor of the Government where it is not provided for in the statute, where it is not an 'established type of liability', and where the legislative history is inconclusive as to whether Congress intended such a liability" (R. 331). This holding disregards the long established rule that no specific statutory authorization is required for the judicial enforcement of the contractual or other property rights of the United States. It misconceives and misapplies the *Gilman* decision, and it fails to perceive that the summary remedies for reimbursement set forth in the 1940 Act evidence a Congressional "position" (cf. 347 U. S. at 511) to require reimbursement.

[26] Similarly, even if respondents' argument, made below, that they cannot be charged for the additional year's protection extended by the Veterans' Administration (see fn. 1 *supra*, p. 4), is sustained, it does not follow that the United States is not entitled to reimbursement for the cost of protection for their period of military service plus one year following their separation from service.

1. This court held, as early as 1818, that no express statutory authority is necessary to enable the United States to recover for a breach of contract, since "It would be strange, to deny to them [*i. e.*, the United States] a right which is secured to every citizen." *Dugan* v. *United States*, 3 Wheat. 172, 181. In *Cotton* v. *United States*, 11 How. 229, 231–232, where a statute provided a criminal penalty for cutting timber on public lands but prescribed no civil remedy, the Court, affirming the right of the United States to bring an action of trespass, declared, "It would present a strange anomaly, indeed, if, having the power to make contracts and hold property as other persons, natural or artificial, they [*i. e.*, the United States] were not entitled to the same remedies for their protection. * * * [A]s a corporation or body politic they may bring suits to enforce their contracts and protect their property." See also, *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537, 550; *United States* v. *Standard Oil Co. of California*, 332 U. S. 301, 315, fn. 22. This rule applies not only in actions on express contracts and in tort but also in suits based on various quasi-contractual obligations or contracts implied in law. Examples, among many, include the right of the United States to recover money paid by it under a mistake of law or fact (*e. g.*, *Wisconsin C. R. R. Co.*, v. *United States*, 164 U. S. 190): the right of the United States as drawee of a check to recover money paid on a forged endorsement (*e. g.*, *Clearfield Trust Co.* v. *United States*, 318 U. S. 363; *United States* v. *National Exchange Bank*, 214 U. S. 302); and the right of the United States to set aside

transactions for fraud (*United States* v. *San Jacinto Tin Co.,* 125 U. S. 273, 279–285). The right to maintain suit to establish and safeguard the Government's contract and property interests is an inherent power of the United States. It "is independent of statute" (*United States* v. *Bank of Metropolis,* 15 Pet. 377, 401; *United States* v. *California,* 332 U. S. 19, 26–27). It follows that, if the United States undertakes the obligations of a guarantor, it needs no express statutory authority to avail itself of the same common law remedies which any guarantor would have.

2. The decision in *United States* v. *Gilman, supra,* certainly cannot be read as discarding this basic precept, expounded more than a hundred years ago and emphatically reiterated through those years in a wealth of decisions of this Court. In *Gilman,* the Court was presented with a problem raising policy issues with unique implications under a particular statute with a purpose, history, and provisions entirely unlike the one at bar. The question there presented was whether the United States, having been held liable for the negligence of its employee in a suit under the Federal Tort Claims Act (28 U. S. C. 1346 (b), 2671 *et seq.*), could recover indemnity from that employee. In denying recovery, the Court emphasized the disciplinary effect of such a suit upon those who make government service their career.[27] It pointed to the potential heavy financial burden in-

[27] "When the United States sues an employee and takes him to court, it lays the heavy hand of discipline on him, as onerous to the employee perhaps as any measure the employer might take, except discharge itself." 347 U. S. at 510.

volved, one which is usually completely out of proportion to an employee's financial responsibility, and underscored the probable effects on morale, on seniority, and on the promotion and demotion possibilities of the employee. 347 U. S. at 509-510. The absence of an expression of Congressional position on these delicate, complex, and wholly internal policy questions was an added reason for denying recovery.[28] The Court, however, distinguished cases involving "an established type of liability" (*id.* at 509) as not requiring specific statutory sanction.

Here, we are dealing with such an established type of liability, *viz.*, the debtor's obligation to reimburse his guarantor. Moreover, the considerations militating against recovery in *Gilman* are certainly not involved in this case. There, the Court was construing a statute with an overriding purpose to impose liability upon the United States for torts committed by its employees while acting in furtherance of Government business, a liability which every employer has.[29] As we have shown (*supra*, p. 17, *et seq.*; *infra*, p. 99 *et seq.*), the broad purpose of the Civil Relief Act of 1940 is not to assume the obligations of servicemen or to effect the

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[28] The Court also pointed to the Tort Claims Act provision making a judgment against the United States a bar to an action against the employee (28 U. S. C. 2676) and to certain explanatory statements at Congressional hearings, which, if anything, indicated a Congressional position opposed to indemnity. 347 U. S. at 511, fn. 2.

[29] The liability of the United States under the Tort Claims is conditioned upon the employee's tort being committed "while acting within the scope of his office or employment" (28 U. S. C. 1346 (b)), and is subject to numerous exceptions (*id.*, 2674, 2680).

discharge of their debts, but merely to accomplish a temporary postponement of those obligations, none of which were incurred by reason of Government employment. Respondents are not Government employees whose activity on behalf of the United States and in furtherance of its affairs subjected them to an obligation for which the United States, under moral or legal grounds, is vicariously liable. On the contrary, respondents' obligation for defaulted insurance premiums arose out of their private affairs. It stems from contracts executed for their personal protection before they joined the armed forces, contracts which were contined in force at their own election, essentially for their own benefit, and which obligated them for a liquidated amount known to them at all times and presumably fitted to their civilian ability to pay. Enforcement of that obligation involves no problem of discipline or morale or internal Federal relationships. Thus, the crucial factors in *Gilman* are not present here.[30]

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[30] In holding that the *Gilman* case "is clearly distinguishable" from the present situation, the Tenth Circuit, in *United States* v. *Hendler*, 225 F. 2d 106, 112–113, discussed the dissimilar purpose and policy of the Tort Claims Act and then stated:

"Here we are dealing with the Government and its military servicemen in times of war, for whom it already had made provision for cheap life insurance before the passage of this Act. In this Act it was not concerned primarily with affording servicemen additional insurance. Its main concern was with the protection of their vested private rights. It intended to protect those rights by suspending the right to enforce legal obligations such as breach of contract resulting because of military service, and yet affording some protection to creditors. For that reason it gave servicemen who had commercial insurance in force the right to come in under the provisions of the Act and prevent the forfeiture of such insurance, because of their inability to make the payments

3. The tendency, reflected in the opinion below, to extend the *Gilman* ruling outside the Tort Claims Act field may have serious consequences in other areas of Government litigation, whenever the Government's rights are based upon implication or common law principles not specifically detailed in a statute. But even if *Gilman* does have a wider application than we believe, the special requirement it suggested—that Congress must indicate its position on policy as to remedies available to the United States—is met here. Elsewhere, we show that the legislative history (*infra,* p. 51, *et seq.*), the purpose and the terms of the Act itself (*supra,* p. 16 *et seq.*), particularly the summary remedies afforded the United States under Article IV (*supra,* p. 30 *et seq.*), disclose a Congressional policy that the insured is not to receive insurance gratuitously and that the United States should be able to recover from him the defaulted premiums paid on his behalf. Thus, Congress *has* taken a "position" on the question of indemnification or reimbursement. By the clearest implication, the provisions of the Act show that Congress intended that the insured should not obtain free insurance and that he or his funds should reimburse the United States; "what is clearly

during their time of service, by guaranteeing the premiums during their military service and affording them the opportunity to continue such insurance in force when they returned. Not only do we find nothing in the legislative history indicating that this service was to be a gratuity to servicemen but on the contrary we think that the legislative history, considered against the background of the purpose sought to be accomplished by the passage of the Act, requires the conclusion that the usual rules of guarantyship were intended to apply to servicemen availing themselves of the additional benefits of the Act."

implied is as much a part of a law as what is expressed." *Luria* v. *United States*, 231 U. S. 9, 24; *South Carolina* v. *United States*, 199 U. S. 437, 451; *McHenry* v. *Alford*, 168 U. S. 651, 672.

II. THE LEGISLATIVE HISTORY OF THE 1940 ACT, OF ITS 1918 COUNTERPART, AND OF ITS 1942 AMENDMENT, SHOW THAT CONGRESS INTENDED TO CREATE A TRANSACTION OF GUARANTY AND CONTEMPLATED REIMBURSEMENT BY THE INSURED

The 1940 Act has its roots in the Soldiers' and Sailors' Civil Relief Act of March 8, 1918, 40 Stat. 440, enacted during World War I. The general purpose of that and the 1940 Act are identical and their language is virtually the same; the 1940 Act has been described by this Court as a "substantial reenactment" of the 1918 Act (*Boone* v. *Lightner*, 319 U. S. 561, 565), and by its draftsmen as "an up-to-date revision" of the 1918 Act.[31] Because of this close affinity, the legislative history of the 1918 Act and its administrative construction are pertinent and instructive in interpreting the later reenactment. *Ibid.*, 319 U. S. at 565–569; *Allen* v. *Grand Central Aircraft Co.*, 347 U. S. 535, 541. Similarly, guidance in interpreting the 1940 Act may be sought from its 1942 Amendment and the legislative history of that Amendment. The history of these three related statutes discloses nothing to indicate that Congress intended that payments by the Government to protect servicemen's private insurance policies should be a gratuity to the servicemen; on the contrary, "the

[31] Letter of Secretary of War Stimson to the Speaker of the House, H. Rept. No. 3001, 76th Cong., 3d Sess., p. 5.

legislative history, considered against the background of the purpose sought to be accomplished by the passage of the Act, requires the conclusion that the usual rules of guarantyship were intended to apply" (*United States* v. *Hendler*, 225 F. 2d 106, 113 (C. A. 10)); and see *United States* v. *Nichols*, 105 F. Supp. 543 (N. D. Ia.), appeal dismissed, 202 F. 2d 956, 958 (C. A. 8)).

A. THE LEGISLATIVE HISTORY OF THE 1918 ACT

In this portion of the brief we shall set forth only a short summary of the legislative history of the 1918 Act. A detailed discussion is set forth in Appendix E, *infra*, pp. 99–108.

As originally introduced, the insurance provisions of the proposed law simply prohibited the forfeiture or lapse of a serviceman's life insurance policy for non-payment of premiums, and provided that the defaulted premiums should be charged to the policy as a loan. Representatives of the insurance industry vigorously objected, pointing out that an insured normally is not obligated to pay future premiums, that the bill compelled the insurer to keep the policy in force but failed to create an enforcible obligation or indebtedness from the insured to the insurer for the premiums; instead, the bill really gave the insured an option to pay or not to pay the premiums, as he wished (which, we note again, is exactly the effect of the decision below).[32] To

[32] § 13 of S. 2859, 65th Cong., 1st Sess.; *Hearings and Memoranda before the Subcommittee of the Committee on the Judiciary, U. S. Senate, 65th Cong., 1st and 2d Sess., on S. 2859 and H. R. 6361*, pp. 18–21, 31, 102 *et seq.*

meet this objection, the insurance provisions were revised and were presented as a separate bill entitled, "A bill to provide a mode of *guaranty* against lapse or forfeiture of life insurance policies held by persons in military service." [33] The revised proposal, which was later enacted as Article IV of the 1918 and 1940 Acts, provided for a consensual arrangement creating an enforcible obligation on the part of the insured for his defaulted premiums, payment of which was guaranteed by the United States. This is confirmed by the testimony given at committee hearings by Dean Wigmore, the principal draftsman, and by the committee reports. See Appendix E, *infra*, pp. 99–108.

Dean Wigmore testified that the new proposal met the objections of the industry. *Hearings, supra*, fn. 32, at p. 123 *et seq.* He agreed with Senator Overman's interpretation that under the new proposal the serviceman would be subject to a debt, for he would owe the premiums to the insurance company,[34] and that if he failed to pay that debt, the Government would (*ibid.*, at p. 134). Questioned as to whether the Government could obtain repayment from the serviceman, Dean Wigmore answered affirmatively and went on to explain that in his belief the cash surrender value of the policy, which was subject to the Government's lien, would in most instances be sufficient to recoup the expenditure.[35] *Id.*, at 135. He was not asked specifically and therefore

[33] Emphasis added. The text of the revised bill is set out at *Hearings*, *supra*, fn. 32, at pp. 124–131.

[34] Compare the industry's objections to the original bill which failed to provide an enforcible obligation of the insured, *infra*, pp. 101–103.

[35] See fn. 11, *infra*, p. 105.

furnished no direct answer to whether, in his view, the Government would be denied the right of recourse against the servicemen for any deficiency. On the other hand, he had stressed earlier that the whole approach in writing the original bill was merely to suspend remedies for a temporary period, not to deprive any creditor of his rights or to relieve any debtor of his obligations. See *supra*, p. 19, and *infra*, pp. 99–100. The revised insurance provisions did not change that approach; they were designed to strengthen it. Their purpose was to meet the problem of insurance contracts by creating a debt enforcible against the policyholder for the unpaid premiums, and, through the Government's guaranty, assuring payment of that debt.

B. THE ADMINISTRATIVE CONSTRUCTION OF THE 1918 ACT

Although the word "guaranty" does not appear in the language of Article IV of the 1918 Act,[36] its provisions and the foregoing legislative history indicate beyond any doubt that the transactions envisaged by the Congress was one of guaranty, a concept which is, of course, familiar in the common law. The terms of the statute and the legislative background indicate also that Congress was not bestowing a gratuity but was contemplating full reimbursement for the sums paid under the guaranty. This view is confirmed by the administrative construction and operation of the 1918 Act.

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[36] As noted (*supra*, p. 53), the word had been in the title of the revised separate insurance bill drafted by Dean Wigmore and the insurance industry representatives. The title was dropped, however, when the insurance provisions were reinserted as Article IV of the Civil Relief Act.

From the outset, the 1918 Act was construed by the Treasury Department's Bureau of War Risk Insurance, which administered it, as providing a guaranty.[37] It was also so construed by the Bureau of the Budget and the President concurred.[38] That the Government was not bestowing a gratuity but was contemplating reimbursement for sums expended is reflected in the application which servicemen were required to sign in order to obtain the benefits of the Act.[39] While the application was not wholly clear as

[37] *Memorandum Regarding Life Insurance of Men in Active Military Service under the Soldiers' and Sailors' Civil Relief Act*, (G. P. O. 1918), p. 3. This printed pamphlet, distributed by the Treasury Department for the use and information of insurance officers in explanation of the Act, states that the "Government will *guarantee* to the insurance company or organization the payment of premium * * *." [Emphasis added.]

[38] In May 1922, President Harding transmitted to Congress a request for a $25,000 appropriation for the Veterans Bureau to effect a settlement with the insurance companies in accordance with the final accounting provisions of the 1918 Act. *House Document No. 308, 67th Cong., 2d Sess.* Transmitted with the President's communication was a letter from the Director of the Bureau of the Budget, in which the President stated he concurred, which explained that the 1918 Act had provided for a "guarantee" of payment of premiums. The appropriation was passed by the Act of July 1, 1922, 42 Stat. 771.

[39] The application form, issued April 8, 1918 (T. D. 26 W. R.), is set out in full in *Regulations and Procedure, United States Veterans' Bureau* (*Active and Obsolete Issues as of December 31, 1928*), *Part I*, pp. 10–11. Included in that application signed by the insured were the following two paragraphs:

"I hereby apply for the benefits of Article IV of the soldiers' and sailors' civil relief act, with reference to the above-described insurance on my life. This application is a consent to such modification of the terms of the original contract of insurance as are made necessary by the provisions of such article.

"I agree that the United States shall be *reimbursed* for any money advanced on account of unpaid premiums on the above

to whether such reimbursement was to be derived solely from the proceeds of the policy and its cash surrender value, the language certainly precludes the contention that a gratuity rather than a debt was contemplated. The agreement to "reimburse" necessarily carried with it an acknowledgement of a future obligation or debt of the insured to the United States; otherwise, there would be no occasion for repayment. It was to assure such repayment that the Act provided for a lien to the United States, and the form of the application gave a consensual or contractual basis for that lien, which would not be available at common law.[40]

The Veterans Bureau subsequently reported to Congress that, during the entire period the 1918 Act was in force, a total of 7,745 applications for insurance protection were received and approved. This represented life insurance in an amount in excess of

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policy (with interest at the rate of 5 percent per annum), out of the above policy, in the event of death or maturity, and out of any cash value, in the event such premiums are not paid within one year after the termination of the present war or the termination of my period of military service, whichever date is the earlier." [Emphasis added.]

[40] Regulation No. 21, promulgated February 26, 1919, also underscores the expectation of reimbursement. § 409 of the 1918 Act prohibited any loan, settlement, or payment of dividend on a protected policy which might prejudice the security of the lien of the United States. Regulation No. 21 permitted a loan on the policy "only when the cash surrender value of the policy * * * would at all times be sufficient to satisfy the claims of the United States, already accrued or which may accrue under the provisions of the act, and in addition thereto be sufficient for the payment of the new loan * * *." *Regulations and Procedure, United States Veterans' Bureau* (*Active and Obsolete Issues as of December 31, 1928*), *Part I*, p. 39.

$12,500,000 and a guaranty by the United States of yearly premiums of over $362,000. *Report of the United States Veterans Bureau (1924)*, p. 445. (Compare the experience under the 1940 Act; see fn. 48, *infra*, p. 63). Of this amount, servicemen ultimately paid their insurers all but approximately $20,000. That is, roughly 95% of the premiums guaranteed were paid to the insurers directly by the insureds. Pursuant to its guaranty, the United States paid the small balance. Significantly, however, the Report informed Congress that some recoveries had in fact been made by the Bureau from the insureds to reimburse the Government for its outlay. *Ibid.* The Veterans' Administration has stated:

> The precise extent of the Government's efforts to collect from insureds who permitted their insurance to lapse under conditions requiring the Government to pay to insurers the differences between the premiums with interest and the cash surrender value of the insurance is not known, but it is clear that, in the administration of the 1918 Act, collections were effected in some cases. A list of at least 14 such cases is presently at hand. They reflect collections during the years 1923–24, and one such collection was made as late as October 8, 1925. For present purposes the amount of such collections and the extent to which efforts were made to effectuate them are matters of no importance. The significant thing is that they negative any idea or assertion that an administrative practice prevailed not to regard the insured as indebted to the United States. [*Decisions of the Administrator of Veterans'*

Affairs, No. 742, Supp. to Vol. 1, p. 93, 98 (April 1947); R. 72–73.]

This practice reflected the administrative interpretation of the 1918 Act that the insured was indebted to the United States and could be called to account. The court below, in concluding that reimbursement is not obtainable under the 1940 Act, made no mention of the manner in which the 1918 Act was interpreted and administered.

C. THE LEGISLATIVE HISTORY AND ADMINISTRATIVE CONSTRUCTION OF THE 1940 ACT

1. With the advent of the national defense program following the outbreak of World War II and the accompanying enlargement of the armed forces, the need for servicemen's civil relief again became imperative. Most of the benefits of the 1918 Act were revived in the summer of 1940. By amendments to the National Guard Bill[41] and the bill which became the Selective Training and Service Act of 1940,[42] the benefits were extended to persons brought into the armed forces under those statutes. These amendments in effect incorporated the 1918 Act by reference. But they expressly excluded the insurance and tax provisions of the 1918 Act.[43] None of the congressional committee reports relating to these bills discusses these exclusions.

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[41] 54 Stat. 858, 860 (approved August 27, 1940).

[42] 54 Stat. 885, 895–6 (approved September 16, 1940).

[43] Senator Overton, the sponsor of the amendments, explained that they were temporary in nature and that the War Department would soon draft a separate bill. 86 Cong. Rec. 10052, 10318, 10500.

In mid-August 1940, bills sponsored by the War Department which in substance proposed a detailed reenactment (as distinguished from incorporation by reference) of the 1918 law were introduced.[44] These bills contained an Article relating to commercial life insurance protection different from the 1918 law only as to one aspect of the method of administration (see *infra*, fn. 9, p. 107). In their reports on the bills, both the Senate and the House Committees on Military Affairs referred to the insurance article as a *guaranty* and used no language suggesting a gratuity.[45] Apart from reference to the urgent need for enactment of the bill, there was little discussion on the floor of the Senate with respect to the insurance provisions. 86 Cong. Rec. 12837.

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[44] H. R. 10338, 76th Cong., 3d sess., was introduced in the House by Representative May; Senator Overton introduced its counterpart, S. 4270, in the Senate. See 86 Cong. Rec. 10292; H. Rept. No. 3001, 76th Cong., 3d Sess., pp. 4–5.

[45] S. Rep. No. 2109, 76th Cong., 3d Sess., p. 3, explains with regard to the insurance provisions: "In the case of life-insurance policies, upon application by persons in the military services, the Administrator of Veterans' Affairs may *guarantee* payment of premiums in order to prevent lapsing or forfeiture of policies. Such persons may, within 1 year after leaving the military service, pay up premiums unpaid by them and resume payment of regular premiums. If they do not, the policy lapses and the cash surrender value accrues to the Government to the extent necessary to meet the cost of the premiums which it has guaranteed." H. Rept. No. 3001, 76th Cong., 3d Sess., p. 4, comparing the proposed bill with the 1918 law, states as to the insurance provisions: "The only change in this article relates to method of administration. In *guaranteeing* insurance premiums, certificates issued by the Veterans' Administration are used, instead of $100 bonds issued by the Treasury Department." [Emphasis added.]

In the House, however, a very significant discussion occurred. 86 Cong. Rec. 13132–13133. The debate there reveals that it was the Congessional purpose—certainly the House's understanding—that the insurance provisions of the proposed bill would not result in conferring a gratuity, but, rather, would provide a period of suspension as to the payment of insurance premiums; that, just as in the case of other civil obligations of the serviceman, the measure provided for a temporary delay and not for a wiping out of the obligations accruing; that the Government would simply guarantee payment of defaulted premiums during that period of suspension; and that, if the Government had to pay the premiums by reason of its guaranty, the serviceman would later be obligated to reimburse it for such payment. We have set out the discussion in Appendix F, *infra*, pp. 109–111.

This discussion, despite some minor inaccuracies as to the technical aspects of the bill, sharply contradicts the idea that Congress intended that Government payments of defaulted premiums were not to be reimbursed. It shows clearly that, the only time the specific question came up in Congress, those managing the bill stated the purpose and expectation to be that the recipients of the insurance protection would, at some later period, have to repay the Government for its expenditures.[46]

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[46] The Tenth Circuit, in *United States* v. *Hendler*, 225 F. 2d 106, regarded this discussion as to the meaning of the bill, which took place after the bill was reported out favorably by the Committees and which dealt specifically with the problem of the insured's personal liability, as entitled to considerable weight. See also *United States* v. *Nichols*, *supra*, 105 F. Supp. at 553–554.

Thereafter, the House and Senate *bills went to conference.* The Senate bill (S. 4270) was adopted with minor changes not relevant here. Since the Senate bill did not differ from the House bill in its insurance provisions there was no occasion for the conference report (H. Rept. No. 3030, 76th Cong., 3d Sess.) to comment on this aspect. The bill was enacted on October 17, 1940, 54 Stat. 1178.

2. Because the 1940 Act was amended in 1942 before the termination of World War II and before the protection given by that Act had ended, there was hardly occasion for, a fixed administrative construction or practice to become established before the 1942 amendment. But, as in the case of the 1918 Act, the application form and the regulations issued under the 1940 Act speak of a *guaranty* and look toward the insured's reimbursement of payments which the United States might make under that guaranty. *E. g.,* see 38 C. F. R. (1941 Supp.) 10.3300, 10.3309, 10.3310; R. 293. However, being closely patterned on the provisions of the Act itself, they do not refer specifically to personal reimbursement as distinguished from reimbursement from the proceeds of, or lien upon, the policy.[47] In

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The court below minimized it, however, because the earlier Senate Report on the bill spoke only of reimbursement from the cash surrender value (and was silent as to personal liability). R. 330.

[47] A number of insurance agents, some in good faith and some not, sold life insurance at high premium rates to persons expecting immediate induction into the service by representing to them that they would have to pay only one quarterly premium and that thereafter the Government would take over the expense and they would have free insurance during their period in service. See *Berenbeim* v. *United States*, 164 F. 2d 679 (C. A. 10), certiorari denied, 333 U. S. 827; *Decisions of the Administrator*

the court below, respondent stressed the ambiguous statements of certain Veterans' Administration officials (R. 45–48). These officials, when informally answering inquiries made by persons in the insurance field, replied that the Act did not have provision for collecting from the insured the amount paid by the Government. They did not say that the insured would not be liable for repayment, but only that the Act did not have any provision for collection. Actually, of course, there was no express provision, and that is what gives rise to the present litigation. But whatever inferences were drawn from these enigmatic replies, it has long been settled that the United States can neither be bound nor estopped by the mistaken representations of its officials, particularly where the statements are informal. *Federal Crop Ins. Corp.* v. *Merrill*, 332 U. S. 380; *United States* v. *Stewart*, 311 U. S. 60, 70; *Whiteside* v. *United States*, 93 U. S. 247, 257; *Lee* v. *Munroe*, 7 Cranch. 366.

The first time the Veterans' Administration took a formal position on the point, with reference to the 1940 Act, was in *Decisions of the Administrator of Veterans' Affairs, No. 513* (March 1, 1943), Vol. 1, p. 781 (set out at R. 56–61), and it was there determined that the insured is obligated to reimburse the United States. That decision was carefully reexamined and reaffirmed in *Decisions, supra. No. 742*, Supp.

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of Veterans' Affairs, No. 742, Supp. to Vol. 1, pp. 98, 100; R. 75. See also, R. 181–184. In the instant case, respondent Plesha, who obtained his policy shortly before entering the service, testified that he understood he would have to pay the premiums, not the Government. R. 183–184.

to Vol. 1, p. 93 (April 1, 1947) (set out at R. 62–94). Those decisions express the formal and considered position of the administrative agency. And from that time until the present, the agency has consistently adhered to that position and has acted on it in a multitude of cases.[48]

D. THE LEGISLATIVE HISTORY OF THE 1942 AMENDMENT

"Subsequent legislation may be considered to assist in the interpretation of prior legislation upon the same subject." *Tiger* v. *Western Investment Co.*, 221

[48] By June 30, 1942, the Veterans' Administration had approved more than 23,400 applications for protection of private life insurance policies under the 1940 Act, representing insurance in the face amount of over $56,500,000. *Annual Report of the Administrator of Veterans' Affairs for the Fiscal Year Ending June 30, 1942*, p. 31. We are informed by the Veterans' Administration that more than 4,700 certificates, to secure defaulted premiums in excess of $3,082,000, were issued to insurers under the guaranty provisions of the 1940 Act. Some of these certificates were revoked from time to time as insureds paid their past due premiums.

Since March 1943, when the Veterans' Administration formally ruled that a debt rather than a gratuity resulted from the Government's payment of the insured's defaulted premiums under the 1940 Act, it has been the administrative practice to seek reimbursement after the United States, pursuant to its guaranty, has made payment to the insurer. A great many collections have been effected through the years and in numerous instances payment was effected by set-off against NSLI dividends, as in the present case. In holding these collections improper and thus invalidating the consistent administrative practice, followed under both the 1918 and 1940 Acts, the court below does not say that the agency's interpretation is "clearly wrong" or that "a different construction [of the Act] is plainly required" (*United States* v. *Jackson*, 280 U. S. 183, 193; *United States* v. *Citizens Loan Co.*, 316 U. S. 209, 214); indeed, it concedes that Congress may have intended it (R. 331). An administrative interpretation over a long period of years, controlling collections in probably thousands of instances, is entitled to more weight than the court below afforded it.

U. S. 286, 309; *Great Northern Ry. Co.* v. *United States,* 315 U. S. 262, 277; cf. *United States* v. *Hutcheson,* 312 U. S. 219; *Brown* v. *Duchesne,* 19 How. 183, 194. Accordingly, in seeking to determine the legislative purpose of the 1940 Act resort may properly be had to certain later legislative events.

Within a few months after enactment of the 1940 Act it became apparent that various of its provisions needed amendment. A number of bills were introduced in the 77th Congress proposing several changes.[49] A change in the insurance provisions was suggested by the Veterans' Administration in April 1941. It transmitted to the Senate a bill intended to clarify and liberalize Article IV of the 1940 Act and to eliminate much of the administrative work required under that law.[50] It specifically described the transaction as one of guaranty and it went on and made explicit that the serviceman must reimburse his guarantor for its payment of his defaulted premiums. As enacted, the law reads (§ 406, *infra,* pp. 86–87; emphasis added):

> Payment of premiums and interest thereon * * * becoming due on a policy while protected under the provisions of this article *is guaranteed by the United States,* and if the amount so *guaranteed* is not paid to the insurer prior to the expiration of the period of insurance protection * * * the United States shall pay the

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[49] See S. Rept. No. 1558, 77th Cong., 2d Sess., p. 1; H. Rept. No. 2198, 77th Cong., 2d Sess., pp. 1–2; 88 Cong. Rec. 5363.

[50] The Veterans Administration letter of transmittal explaining the various proposed changes is set out in S. Rept. No. 716, 77th Cong., 1st Sess., pp. 4–6 (Oct. 20, 1941).

insurer the difference between such amount and the cash surrender value. The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended, *shall become a debt due to the United States by the insured* on whose account payment was made and, notwithstanding any other Act, *such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law.*

The provisions of the Veterans' Administration's proposed bill were substituted intact for those contained in a bill (S. 1372, 77th Cong., 1st Sess.) to amend Article IV which was then under consideration before the Senate Committee on Military Affairs.[51]

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[51] *Decisions of the Administrator of Veterans' Affairs, No. 742*, Vol. 1, p. 100 (R. 75–76), points out that the new clarifying proposal, as introduced, read in part:

> "The amount paid by the United States to an insurer shall become a debt due to the United States by the insured * * *."

Pursuant to a proposal made by the Association of Life Insurance Presidents on May 16, 1941, this language was changed to read:

> "The amount paid by the United States to an insurer On Account of Applications Made Subsequent to Approval of This Act shall become a debt due to the United States by the insured * * *."

As reported out of the Senate Committee on Military Affairs (S. Rept. 716, *supra*, at p. 3) the language (§ 406) was changed to read:

> "The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended, shall become a debt due to the United States by the insured * * *."

The Committee Report does not comment on these changes in language.

Recommending its passage, the Senate Committee stated in its report:

> The proposed amendment has been drafted in accordance with the suggestions of the Veterans' Administration *for the purpose of clarification* and will not effect any substantial change in the basic purpose of the bill * * *.
>
> The purpose of the proposed amendment is to substitute a more workable law and to avoid much of the administrative work required under article IV as now enacted. It will *liberalize* the existing law * * *.[52]

The bill was promptly passed by the Senate and then was referred to the House Committee on Military Affairs. 87 Cong. Rec. 8708–8709, 8808. Meanwhile, a subcommittee of the latter had been appointed to study the numerous proposals to amend other aspects of the 1940 Act. As a result of its study, the subcommittee made a recommendation to the full committee in the form of a bill (H. R. 7029, 77th Cong., 2d Sess., and see H. Rept. No. 2198, 77th Cong., 2d Sess., pp. 1–2). This bill, too, contained a section stating that the payment by the United States of defaulted premiums shall constitute a debt due from the serviceman to the United States.[53] Following hearings on H. R. 7029,[54] the House Committee revised

[52] S. Rept. No. 716, 77th Cong., 1st Sess., p. 3 (emphasis added).

[53] Sec. 409 of H. R. 7029. The bill is set out in full in *Hearings before the Committee on Military Affairs, H. Rep., 77th Cong., 2d Sess., on H. R. 7029*, pp. 1–7. The language of Sec. 409 of this bill is identical with the part of Sec. 406 of S. 1372, as passed by the Senate, quoted above in fn. 51.

[54] Extracts from these hearings are quoted in *Decisions of the Administrator of Veterans' Affairs, No. 742*, Supp. to Vol. 1, at pp. 100–102; R. 77–81. During the course of these hearings,

that bill and caused H. R. 7164, 77th Cong., 2d Sess. to be introduced as a substitute. The latter bill (H. R. 7164) did not contain the language of § 406 of the Senate bill (S. 1372, *supra,* pp. 64–65) describing the transaction as a guaranty and the resulting accrual of a debt, although its provisions tend to indicate the same results.[55] The Committee Report states generally that the purpose of the bill is to provide additional benefits and that language has been added "for the purpose of clarification only and to carry out the original intent of Congress" (H. Rept. No. 2198, *supra,* fn. 55, at p. 2). In that connection it should be noted that the Report (*ibid.,* p. 6) and the sponsors of the bill on the floor of the House (88 Cong. Rec. 5363–5366) freely refer to the transaction as a "guaranty".

The House passed H. R. 7164 (88 Cong. Rec. 5373) and sent it to the Senate. There, by amendment on

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H. W. Breining, a VA insurance official, stated that "under present construction of existing law" the insured would not be liable for defaulted premiums in excess of the cash surrender value of his policy (R. 79–80). This statement by Mr. Breining, a layman (R. 19), obviously had reference to the earlier informal and ambiguous replies made to certain inquiries by persons in the insurance field (*supra,* p. 62), which were interpreted by those persons as meaning that no liability would result. Actually, as we have already noted (*supra,* pp. 62–63), the Veterans' Administration never formally construed the 1940 law until March 1943 when *Administrator's Decision No. 513* was rendered (*ibid*).

[55] See Secs. 407 and 408, H. Rept. No. 2198, 77th Cong., 2d Sess., at p. 16. Significantly, the Committee Report's reference to these provisions explains that "A method is also prescribed whereby a person who has availed himself of the benefits of article IV may repay the premiums guaranteed by the Government over a period of 3 years subsequent to the period of military service, instead of within 1 year *as now provided*" (H. Rept. 2198, *supra,* at p. 6; emphasis added). See also 88 Cong. Rec. 5363–5369; R. 81–83.

the floor, the Senate struck all of the insurance provisions from the House bill and substituted the provisions of the bill (S. 1372, *supra*) previously proposed by the Veterans' Administration and enacted by the Senate. 88 Cong. Rec. 6705–6707.[56] Following this amendment and passage by the Senate, the bill was sent to conference. There, the Senate's version (which, in turn, was the Veterans' Administration's) of the amended insurance provisions was retained, some minor changes being made. See H. Rept. No. 2481, 77th Cong., 2d Sess., p. 6 (Conference Report).[57] The bill was thereafter enacted and became law on October 6, 1942 (56 Stat. 769, 773).

Apart from the clarifying language describing the transaction as one of guaranty by the United States, with the servicemen being expressly made liable for reimbursement, among the changes effected by the 1942 Amendment, were (1) the period of protection against lapse of policies was extended from one to two years following termination of military service;

[56] Senator Johnson, the sponsor of the amendment, explained that "the purpose of the bill is *to make available additional and further relief and benefits* to persons in the military and naval forces, *and to clarify the original act*, which is known as the act of 1940. Most of the amendments are technical in nature. * * *." 88 Cong. Rec. 6707 (emphasis added).

[57] In reporting and explaining to the House the action of the Conference Committee, Representative Sparkman, a member of that Committee, stated with regard to the payment of defaulted premiums by the United States: "* * * Under the House bill nothing was said about these amounts being claims against the person in the armed forces after he got out of the service. The Senate [bill] provides that they shall be a claim against him and shall be collected against any amounts that may become due him by the United States. The House accepted the Senate provision." 88 Cong. Rec. 7545.

(2) the face value of policies protected was raised from 5 to 10 thousand dollars; (3) a beneficiary was given the right to apply for the Act's protection in case the insured was outside continental United States; and (4) the Amendment dropped the exclusion from the protection of the 1940 Act of policies as to which there was an outstanding loan equal to at least 50% of the cash surrender value of the policy. It was also provided (§ 408 (1), *infra*, p. 87) that the provisions of the 1940 Act should remain in force with respect to applications for protection executed prior to enactment of the amendment, and that policies covered by such applications should continue to be entitled to the protection of the original Act.[58] The Amendment provided further that insurers, whose policies were protected under the 1940 Act, could choose to settle their accounts with the United States under the much simpler method of the 1942 Amendment (§ 408 (2), *infra*, pp. 87–88).

The Amendment was not intended to and did not result in any substantial change in the scheme of insurance protection. As we have noted (*supra*, p. 66), the Senate Committee declared generally that the Amendment would *not* effect any substantial change in

[58] The 1940 Act had set up transactions essentially contractual in nature and presumably Congress had no intention to alter them. These provisions of § 408 (1) also eliminated the need for a person whose policy was already protected by the 1940 Act to file a new application, which would have resulted in confusion, in administrative work both by the Veterans' Administration and the insurers, and in other difficulties such as contacting servicemen located at different war fronts to advise them of the need for new applications, etc.

the basic purpose of the bill. That purpose, as the history of the 1918 and 1940 Acts demonstrates, was to suspend temporarily servicemen's obligations, not to discharge or to have the United States assume them. Nor did the 1942 Amendment result in any increase in respondents' liability. The insured's obligation to the Government was at all times the same as his obligation to the insurer. The additional year's protection of his policy was one of the liberalizing features of the 1942 law. Since all servicemen applying for protection after enactment of the Amendment were to receive protection during this enlarged period, the Veterans' Administration properly construed the Amendment as offering like protection to those who had applied under the original Act. Respondents were given full notice and could have discontinued that protection at any time (R. 288), but they did not do so.

Finally, there is additional evidence that Congress considered the 1940 Act, as originally enacted, as imposing a debt or obligation upon the insured to reimburse the Government for any amount expended in his behalf. The Act of April 3, 1948, 62 Stat. 160, amended Sec. 406 of the 1942 Amendment by adding these words (now in 50 U. S. C. App. 546):

> Any moneys received as repayment of *debts* incurred under this article [IV], *as originally enacted* and as amended, shall be credited to the appropriation for the payment of claims under this article. [Emphasis added.]

This explicit reference to the original 1940 Act shows that the Congress which passed the 1942 and 1948

Amendments did not believe that, in the respects pertinent to this case, they were changing the law.

III. THE GOVERNMENT HAD THE RIGHT TO OFFSET RESPONDENTS' INDEBTEDNESS AGAINST THEIR NATIONAL SERVICE LIFE INSURANCE DIVIDENDS

Respondents argued below that, even if the Government is entitled to reimbursement, it is prohibited by 38 U. S. C. 454a (*infra*, p. 89) from offsetting their indebtedness under the Civil Relief Act against their National Service Life Insurance dividends. This argument has been so effectively disposed of by *Decisions of the Administrator of Veterans' Affairs, No. 742, supra* (R. 89–94), and by the trial judge's opinion following trial (R. 119–123), that little need be added.[59]

1. Unquestionably, the United States has the right, "which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him." *Gratiot* v. *United States*, 15 Pet. 336, 370; *United States* v. *Munsey Trust Co.*, 332 U. S. 234, 239; *McKnight* v. *United States*, 98 U. S. 179, 186. The rule may be overridden only when a statute unequivocally provides otherwise. § 454a does exempt certain veterans' benefits from set-off by the United States, but there is an exception to that exemption.[60] That exception, permitting the offset of "overpayments" made under laws relating to veterans, is applicable here, as its history reveals.

[59] Having denied the right of reimbursement, the Court of Appeals did not find it necessary to reach this point.

[60] Section 454a bars "the collection by set off or otherwise out of any benefits payable pursuant to any law administered by the Veterans' Administration and relating to veterans * * * of any claim of the United States * * * against * * * any beneficiary * * * *except* amounts due the United States by such bene-

Congress has long been concerned with safeguarding the monetary benefits given to veterans against the claims of their creditors and third parties. For example, R. S. 4747 prohibited the attachment, levy or seizure of veterans' pensions; § 22 of the World War Veterans' Act, 43 Stat. 607, 613, prohibited the assignment of, and exempted from the claims of creditors, the compensation, insurance and maintenance and support allowances payable under that Act; and § 28 of the War Risk Insurance Act, as amended, 40 Stat. 609, had similar provisions. But these exemptions were construed as not preventing creditors from reaching these benefits when they were in the hands of some one other than the veteran himself; thus, collections of the veteran's indebtedness were made from payments due his widow or minor children, and the protection and immunity extended did not cover all benefits. Moreover, the exemptions were construed as not applicable to the United States even as to claims which had no relation to the veterans' benefits laws. In 1935, Congress repealed the earlier protective provisions and substituted a more uniform immunity. 49 Stat. 609; see H. Rept. No. 16, 74th Cong., 1st Sess., and S. Rept. No. 1072, 74th Cong., 1st Sess., p. 6. The 1935 Act provided that payments of benefits made to or on account of a beneficiary under any of the laws relating to veterans shall be exempt from the claims of creditors, but that such provisions shall not attach to claims of the United States arising under such laws.

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ficiary * * * by reason of *overpayments* or illegal payments made under such laws relating to veterans, to such beneficiary * * *." [Emphasis added.]

While the 1935 Act precluded the United States from deducting from veterans' benefits an indebtedness arising under other laws and circumstances, as construed by the Comptroller General it did not prevent recovery of a veteran's indebtedness, arising under veterans' laws, from benefits payable to his dependents or beneficiary (thus permitting the recovery of one person's debt from benefits given to another), nor did it bar the collection of an unrelated debt of the beneficiary from the benefits otherwise payable to that beneficiary. See S. Rept. No. 2198, 76th Cong., 3d Sess., p. 6; H. Rept. No. 1814, 76th Cong., 3d Sess., p. 5. The exemption provision was amended in 1940 (54 Stat. 1195, now 38 U. S. C. 454a) so as to make it clear that any collection by the United States out of benefits flowing to an individual or to his estate should only be on account of that individual's own indebtedness. *Ibid.; Decisions of the Administrator of Veterans' Affairs, No. 742, supra.* The present law confines the Government's right of collection, by setoff or otherwise, out of benefits payable pursuant to a law administered by the Veterans' Administration to claims of the United States against the person or beneficiary who becomes indebted by reason of overpayments or illegal payments made to him or his dependents (as such) under laws relating to veterans (R. 90–91).

It has been the consistent administrative construction of this section that an "overpayment" includes anything of value which a veteran obtains under color of the laws relating to veterans, that "if the Government pays a veteran's obligation pursuant to law and

the veteran refuses to pay the debt therefrom arising, he is in a very real sense overpaid and there is an overpayment within the meaning of the exemption statute" (R. 122; *Administrator's Decision No. 742, supra; ibid., No. 607* (Nov. 24, 1944), Vol. 1, pp. 1097, 1101). The administrative construction is "not to be overturned unless clearly wrong" (*United States* v. *Citizens Loan & Trust Co.,* 316 U. S. 209, 214; *United States* v. *Jackson,* 280 U. S. 183, 193). Far from being wrong, the construction is both reasonable and equitable. It should be noted, moreover, that § 406 of the 1942 Amendment of the Civil Relief Act (described in Congress as a *clarifying* measure) provides specifically for offset. *Supra,* p. 65; *infra,* pp. 86–87. This is of particular significance since at the time the Civil Relief Act of 1940 was under consideration in Congress, the 1935 Act protecting servicemen's benefits from the claims of creditors (*supra,* p. 72) was still in force, and under its provisions, too, the United States would have been permitted to make the set-offs involved in this case.

2. Respondents argued below that insurance protection was neither a "payment" nor an "overpayment" to the insured, but that they were entitled to it as a matter of right. However, their application for protection was in effect a request that the Government guarantee payment of their premiums, and when the Government, pursuant to that guaranty, paid their defaulted premiums, such payment was made on their behalf and discharged their obligation to the insurer. It cannot be said, we believe, that payment to another under such circumstances was

not, to all intents and purposes, a payment to respondents. This was an "overpayment" even within the dictionary definition of the word, which respondents relied on below,[a] for the servicemen were entitled (as a matter of right) to a moratorium, but not to have the Government itself gratuitously assume and discharge their obligations; to obtain a gratuitous discharge of their indebtedness to the insurer would be to obtain compensation or reward "beyond deserts" (as the dictionary puts it).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgments of the court below should be reversed, and the judgment of the District Court ~~should be~~ reinstated.

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[a] Webster's New International Dictionary (2d ed.) defines "overpay" as follows: (verb) "to pay too much to or for; to more than pay; to compensate or reward beyond deserts." (noun) "Pay in excess."